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SIR GEORGE COOKE'S  
REPORTS AND CASES  
OF PRACTICE

IN THE COURT OF COMMON PLEAS,

1706 TO 1747.

THE THIRD EDITION,

WITH THE ADDITIONAL CASES AND REFERENCES CONTAINED

IN MS. NOTES MADE BY L. C. J. EYRE AND

MR. JUSTICE NARES.

*Edited by*

THOMAS TOWNSEND BUCKNILL,

*of the Inner Temple, Barrister at Law.*



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The value and interest attached to these additions is most materially increased by the care and labour exercised by the Editor, and will, we believe, maintain the high character achieved by our former volumes.

THE PUBLISHERS.

*August, 1872.*

# R E P O R T S

AND

CASES of PRACTICE

IN

**The Court of Common Pleas,**

In the Reigns of

Queen ANNE, King GEORGE I. and  
King GEORGE II.

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*By a late Eminent Hand.*

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With Two TABLES; one of the Names of  
the Cafes, the other of the Principal Matters.

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**The Second Edition, with Additional  
References, &c.**

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To the Right Honourable

Sir *JOHN WILLES*, Kt.

Lord Chief Justice of his Majesty's  
Court of Common Pleas,

A N D

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REPORTS  
AND CASES OF PRACTICE IN THE COURT  
OF COMMON PLEAS.

[I] Copley *versus* Delanoy. *Easter 5 Anne,*  
1706.

**I**N this Cause, the Plaintiff having proceeded to execute a Writ of *Scire facias Inquiry*, without giving Notice of the Time of executing the same, a Motion was made to set aside the Execution thereof; and several Practicers having been consulted concerning the Practice in this Particular, it appeared that Notice was usually given, and yet that it had been ruled good without. But the Court thinking it reasonable, that the Party should in all Cases have an Opportunity of seeing that he had Justice done him, in respect to the Measure of Damages, or other Matter to be inquired of, declared that for the future Notice should always be given; and the Defendant, on paying Costs, had Leave to plead to the Writ.

Notice to be given of executing a *Sci' fac' Inquiry*.

*Strangerways v. Alsough, Mich. 4 Geo. 1. post, p. 14.*



Rawlins *versus* Parry, un' Attorn', &c. [2]  
 Mich. 6 Ann. 1707.

Midd. ff.

Privilege.  
 Attorney.

UPON a Motion against the Sheriff, for not allowing a Writ of Privilege for the Discharge of the Defendant, who was taken into Custody on a King's Bench Process; a Precedent was cited of a Writ of Privilege, directed to the Justices of the King's Bench.

But vide  
*Higginson v.*  
*Umfreville,*  
*post*, p. 47.

The Court said, That that Writ might have issued *sub silentio*, but it was laid down as Law and Practice, that where a privileged Person is arrested on Process out of a superior Court, he may plead his Privilege (*viz.* he must sue out his Writ and produce it with his Plea) *sub pede sigilli*; but if on Process out of an inferior Court, his Writ ought to be allowed *instantanter*.

[N. B. If he plead with the Writ annexed his being an Attorney cannot be denied, if without, a certiorari lies to certify whether he is or not. *Vide* 2 *Salk.* 545. *Holt*, 589. *Farresley* (7 *Mod. Rep.*) 106.

Attorneys at large have the same privilege with the Clerks of the Courts and are to appear *de die in diem*. *Sir John How v. Woolley*, 1 *Vent.* 1.

Inferior Courts admit none but their own Attorneys to practice in their Courts, and not Attorneys of the Courts of Westminster. *Gilman v. Wright*. 1 *Vent.* 11.

Qy. If there be not difference between Courts by Prescription and Courts by Patent. *Hastings' Case*. 1 *Sid.* 410.

If a Warrant of Attorney be given after the Continuance-day to enter up a Judgment as of the Term preceding; this may be well enough, if it be dated within the Term; but it cannot be so, if such a Warrant be given to confess a Judgment generally, and dated after the Term. *Error*, 1 *Vent.* 113.

If an Attorney of C. B. orders an Attorney of B. R. to appear for his Client, this is a good Warrant for Attorney of

B. R., and the Attorney of C. B. if he had not authority from his Client, shall be only responsible. So ruled by Holt, C. J. *Trin. 8 Will.* at Guildhall, in *Spencer v. Cate*.

If an Attorney pleads a false Plea, with a design to delay the Plaintiff, he breaks his oath, and is finable by the Court for a Deceit of the Court. Per Holt, C. J. who cited this case. Judgment was given against a man of 40 years of age, and he brought a Writ of Error, and he assigned Infancy for Error, and the Attorney was punished by the Court. *Pearce v. Blake. Hil. 8. Wm. 1696. B. R. Holt, 555. S. C. 2 Salk. 515.*

The common rule for referring an Attorney's Bill, ought not to be granted, unless he has brought his action for his fees, and if there be any bad practice, a special complaint ought to be made of it, and there should be a special Rule. Per Holt, C. J., in *Springate v. Springate. Pasch. 9 Will. 3. B. R. Salk. 332.*

If an Attorney delivers a Bill to his Client, who moves to have it taxed, the Attorney shall make no new addition without Affidavit that he mistook before; and if in such Case the Defendant does not pay the Bill when taxed, the Court will make him pay Costs for the Vexation. *Trin. 9 Will. C. B.*

An Attorney outlawed a Defendant for Fees, who moved to refer his Bill. *Per Cur.* "You are out of Court. Reverse your Outlawry; appear, and then we'll refer the Bill." *Lee v. Mettward. Mich. 8 Will. C. B.*

Attorneys dismissed from one Court from their Practice for Misdemeanour, are not to be admitted to practise in another Court.

Such Attorneys as have not been attending their employment in C. B. by the space of one year last past, unless hindered by sickness, not to be allowed the privilege of Attorneys.

No Attorney to be Lessee in Ejectment or Bail for a Defendant in any action.

A Warrant of Attorney is to be subscribed or accepted by the Defendant's Attorney, and such Warrant not to be revoked; and an Attachment to be granted against the Attorney refusing to appear or to procure an appearance, having so subscribed and accepted.

Any Attorney of either Bench, accepting a Warrant to appear, or subscribing a Process, Declaration, or Warrant to appear, shall be compelled to cause an appearance.

The Party shall not be received to countermand an Appearance or Warrant after his Retainer.

No person without Rule of Court, Order of the Judge or Prothonotary and Notice to the adverse Party, to shift or change his Attorney; and such Attorney newly coming in to take Notice at his peril of the rules whereunto the former Attorney was liable, had he continued.

Every Attorney is to file his Warrant of the Term wherein any Exigent is awarded, Demurrer or Issue joined, or Judgment entered, or which of them shall first happen. Such Warrant to be filed upon or before the Effoign day of every Trinity Term and within twenty-one days after the end of every other Term.

No Officer to the Court to make or suffer to be made any Process or Entry in the name of any person put out of the Roll of Attorneys either as a Discontinuer or for any Misdemeanour, or by Rule of Court, after notice thereof given to such officer by the Clerk of the Warrant for the time being, or his Deputy.

Except such as dwell in London and Westminster, and the Suburbs thereof, or in the Boro' of Southwark, and the liberty of St. Catherine near the Tower of London, no Attorney shall have Privilege as a Clerk to any Prothonotary, but only as Attorney according to the ancient custom.

Every Plaintiff's Attorney who shall prosecute any Cause to issue, shall, upon the delivery of the Copy of such Issue, receive of the Defendant's Attorney the fee for the filing of his Warrant; and the Plaintiff's Attorney shall file as well the Defendant's Warrant of Attorney as the Plaintiff's before the making up of the Record.

No Writ of Privilege, Attachment, or other such process to be signed or allowed by any Officer or Minister of the Court, or be sealed, unless the same be first stamped or signed by the Clerk of the Warrant.

No Attorney or Clerk shall put himself out of a Society of which he is admitted, until he is admitted of some other Society, or shall totally leave off the Practice of the Law.

Any Attorney accepting or subscribing any Warrant of Attorney, shall appear within four days, exclusive of the day of appearance, in London and Middlesex, and eight days in Country Causes under penalty of Attachment.

If any Officer or Attorney of the Court be sued, he ought to be sued by Bill at first and not by Original Writ, and

if he shall refuse to appear, he shall be fore-judged, and then he may be arrested.

But, if one privileged Person sue another, the Plaintiff may and doth usually arrest the Defendant, for that the first Privilege destroys the second.

A Justice's hand necessary to a Writ of Privilege.

Writ of Privilege to an Inferior Court, after Declaration, and Judgment by default, superseded, because it came too late; the Jurisdiction of the Inferior Court being affirmed by accepting the Declaration and not insisting upon Privilege, but suffering the Judgment to go against him. *Mich. 8 Geo. C. B. Wardley v. Ball.* Same doctrine laid down in *Croftley v. Shaw, C. B. 16 Geo. 3, W. Blackst. 1085.*

If an Attorney be sued as Executor or Administrator, he has no Privilege, but the proceeding shall be against him by Original and not by Bill. *Gage's Case. 1 Brownl. and Gold. 47. 2 Sid. 157. Newton v. Rowland. 1 Salk. 2. Woodford v. Partridge, Hill. 10 Geo. C. B.,* though the reason of the privilege seems to be otherwise, but the precedents are to the contrary. *Taylor v. Fuller, post, p. 64. Gage's Case. Hob. 177. S. C. Brownl. 47. 12 Mod. 316. S. C. Ld. Raym. 533 and 1 Salk. 2. 2 Sid. 157. Sav. 20. Bacon's Abr. Attorney (G.)* From *Sir Thomas Parker's Notes.*

If a suit be depending in this Court of C. B., and the Defendant is afterwards sued in an inferior Court for another cause and judgment go against him there, then he can have the privilege of this Court, if he asks it, and may have a Habeas Corpus and be committed in execution here; but it was agreed that after suit commenced here the Defendant cannot be sued in another Court for the same cause. *Dr. Sutton's Case. Lit. 2.*

An Attorney shall not be allowed his privilege against Foreign Attachments in the City of London Courts. *Turbill's Case, 1 Wm. Saund. 67. 1 Sid. 362.]*

*Bower versus Street. Mich. 8 Ann. 1709.*

Notice of Trial.

*Regula Cur.*  
*Mich. 1654. sec.*  
*21. Vid. Anon.*  
*post, p. 4, and*  
*Smith v. Hoff,*  
*post, p. 146.*

*Deighton v.*  
*Dalton, post, p.*  
*15.*

**I**N this Cause, the Practice, as to giving Notice of Trial, came in Question, and was settled by the Court, *viz.* That the Plaintiff and Defendant should give a Term's Notice of Trial, in all Cases where the Issue has been joined above a Year; but if there have been any intermediate Proceedings, as Notice of Trial, or the like, there only common notice is necessary; *vide Buxom & Pellow, post, 66, Mich. 5 Geo. II.*, where the Practice was likewise settled, that where a Term's Notice is requisite, such Notice must be given before the Effjoin-day.

*Smithsend versus Long. Trin. 10 Ann.*  
*1711. Rot. 1062.*

*Costs de incre-*  
*mento in Tres-*  
*pasis.*

*Anonymous, post,*  
*p. 22.*  
*Beck v. Nicholls,*  
*post, p. 24.*

**A**N ACTION of Trespas tried at *Gloucester* at the Summer Assizes, and Damages under 40s. The Declaration suggested several Trespases, and among others, for turning up the Soil with Plows, &c. [3] upon which the Question now was, Whether the Prothonotary should give any Increase of Costs? And Counsel being heard on both Sides, and several Precedents cited, the Court were divided in Opinion, but at last held that no *Costs de incremento* should be taxed.

*Note;* If it had appeared upon the Trial to have been a voluntary Trespas, or if the Title of the Land had come in Question, the Judge would have certified.

And in a Cause between *Haxeltine versus Kirkhouse, East. 2 Geo. II. Foley*, the same Point came again in Question, when the Court held according to the above Resolution.

Thornhill *versus* Lomax. Hil. 10 Ann.

1711.

*Borret.*

ON a Motion to amend a Roll, remaining in the Treasury, whereon by Accident some Ink had fallen; the Clerk of the Treasury and Under-Clerks, and Mr. Holmes the Treasury-keeper, were examined; and it appearing to be a mere Accident, the Court ordered the Roll in the Treasury to be amended by the *Nisi prius* Roll and *Postea*.

Amendment of a Roll in the Treasury by the Record and Postea.

Anonymus. East. 11 Ann. 1712.

IT was declared by the Court, upon a Motion, that all Notices of Trial, and of Inquiries, and Countermands of Notices, ought to be in Writing, and that all verbal Notices were void.

Notices and Countermands to be in Writing.

Anonymus. Easter 11 Ann. 1712.

UPON a Motion concerning the Regularity of a Bill that had been filed against the Defendant, who was an Attorney of this Court, the Court declared, that all Bills against Attornies should be thrice called in open Court, then entered with the Prothonotary, and a Rule being given thereon by the Secondary for the Defendant's Appearance, the Bill should be filed in the Prothonotary's Office till the Rule is out, and afterwards filed with the *Custos Brevium*.

Bills against Attornies. Lazonby v. Bradley, *post*, p. 94.

*Vide* the Rule of Court Trin. 1669, concerning the entering of Bills against Attornies upon Record, before they ought to be filed. See also the Rule made Hill. 1737, by which no Fore-

Trin. 21 Car. II. reg. 2.

Hil. 11 Geo. II. reg. 3.

judger is to be entered against an Attorney in Actions in *London* or *Middlesex*, and where the Defendant resides within twenty Miles of *London*, till four Days after Notice shall be given in Writing of filing the Bill; and in other Cases not till eight Days after such Notice.

[Motion to set aside Judgment as irregular against Defendant, an Attorney. Direction was delivered with Notice to plead in four Days and Judgment signed fifth Day, and Defendant living above twenty Miles from *London*. Notice ought to have been to plead in eight Days according to 3 *Geo. II. M. Rule 2*. On shewing Cause it appeared a Bill was filed against Defendant as an Attorney, 22nd May, and a written Notice then delivered to Defendant's Agent, of the filing such Bill, and that unless he pleaded in eight Days, a Forejudger would be entered, whereupon an Appearance was entered, and Direction delivered as above, and that Judgment was not signed till after the Expiration of eight Days. *P. Cur.* It is very certain the Rule of *M. 3 Geo. II.* does not relate to Attorneys. Before that Rule wherever the Process was returnable in Term, everybody was entitled to an Imparlanee of Course to the next Term, but it was otherwise in *B. R.*; and therefore this Court thought proper to make this Rule for the sake of Expediting Justice, and therefore declares "That upon all Process returnable the 1st and 2nd Return of any Term if the Plaintiff declares in *London* or *Middlesex*, Defendant shall plead within four Days, if in any other County, or Defendant lives above twenty Miles from *London*, within eight Days. So when the Court took away Imparlanes, it added the latter Indulgence of eight Days, to prevent surprise; for before this Rule, everybody, let them be where they would, must have pleaded within four Days, but then an Attorney was not within this Rule, for in the first place it relates to Cases of Process returnable, and now an Attorney is not served with Process, for he is presumed to be attending in Court, but the Bill is filed against him, which is in the Nature of a Direction, and that being on Record he must take Notice of it, and need not have any Notice of a Direction being filed. Besides, an Attorney never was (for the reasons above) entitled to an Imparlanee, therefore not entitled to any other Notice or Indulgence than what is mentioned in the Rule, *Hil. 11 Geo. II.* which having been complied with in the present Case the Judgment is regular. *Howard v. Chandley, C. B. Tr. 4 Geo. III.* Nares for Plaintiff, Whitaker, Defendant.]

Anonymus. *Trin.* 11 *Ann.* 1712.

UPON a Motion in Relation to the due Execution of a Writ of Inquiry of Damages, the Court held, that after an Interlocutory Judgment signed, the Plaintiff need only give common Notice of the Execution of a Writ of Inquiry, notwithstanding the Judgment was signed above a year before; though upon an Issue that hath been joined above a Year, a Term's Notice of Trial must be given.

Notice of Trial and Inquiry.  
*Reg. Cur. Mich.*  
1654, *sec.* 21.  
*Vid. Bower v. Street, ante, p. 2. Buxton v. Pel- low, post, p. 66.*

*Vide* the Case of *Paul v. Gledhil, post, p. 97*, where it is held, that a Term's Notice must be given, as well of the Execution of Writs of Inquiry, as in all other Cases of Notices, where there has not been any Proceeding within the Year.

Anonymus. *Trin.* 11 *Ann.* 1712.

IN *Quare Impedit*, where Judgment is given for the Defendant upon a Demurrer, the Defendant shall have Costs, *per totam Curiam*.

Costs for Defendant after Demurrer in *Quare Impedit*.  
*Vid. Miller v. Seagrave, post, p. 25. Apin v. Constable, post, p. 35.*

[5] Anonymus. *Trin.* 11 *Ann.* 1712.

IT was declared by the Court, that all Precipes for the Passing of Recoveries should be marked with the proper Prothonotary's Name; and at the Time of passing the same should be delivered into Court by one of the Serjeants, otherwise no Recovery to be entered.

Precipes for Recoveries. *Reg. Cur. Mich.*  
1677. *Trin.*  
1736.

Anonymus. *Trin.* 11 *Ann.* 1712.

AN *Habeas Corpus* brought by the Plaintiff, a Declaration delivered, and Judgment signed; but all was set aside as Irregular, because the Plaintiff

*Habeas Corpus* brought by the Plaintiff.



having once made his Election cannot remove his own Cause, nor can the Defendant be compelled to appear.

The like Rule was made *Trin. 10 Ann. Hobbs v. Williams. Prac. Reg. 216.*

*Anonymus. Mich. 11 Ann. 1712.*

Money in Court, and Plaintiff nonsuited. *Lane and others against Wilkin-son, post, p. 36, and Prac. Reg. 250. But vide Rathbone v. Stedman, post, p. 54, and Prac. Reg. 251, and Maddox v. Paslon, post, p. 117, where the Defendants shall have the Money in Part of his Costs, and vid. post, Crockbay v. Martyn, p. 129, and Barnes, p. 281.*

**I**N an Action against an Executor, he paid Money into Court, upon the Common Rule ; and on the Trial the Plaintiff being nonsuited, the Executor moved that he might have the Money out of Court ; and granted ; because he being Executor was unacquainted with the Affairs of his Testator, and might not know whether the Testator owed the Plaintiff any Money or not. But where the Defendant is neither Executor nor Administrator, altho' the Plaintiff be nonsuited, or a Verdict for the Defendant, the Plaintiff shall have the Money out of Court, because the Defendant brings it in as knowing, and being Conscious that he owes the Plaintiff so much.

[The first Motion to pay Money into Court was in Key-linge's Time, and introduced to avoid the hazard and difficulty of pleading a Tender. *White v. Woodhouse, 2 Str. 787, S. C. 1 Barnard, 25.*

Money brought in on pleading a Tender cannot be taken out by the Defendant, though he hath a Verdict. *Cox v. Robinson, 2 Str. 1027.*

On Motion of Walker S<sup>r</sup> for leave to take out of Court the Sum of 8*l.* part of the Sum of 11*l.* 13*s.* paid in by Defendant in this Cause, agreeing to accept the Sum of 8*l.* in full of this Demand with Costs, and why the 3*l.* 13*s.* should not be left in Court for the Benefit of Defendant, Plaintiff consenting 3*l.* 13*s.* should be paid out of the Court to Defendant. This was moved on the Fact that the Sum of 3*l.* odd was due to Defendant, and for which since the payment he had brought an Action in B. R. *Leech v. Corwper, Pasch. 19 Geo. III.*

On showing Cause, Grose S<sup>t</sup> said he should have no objection to this, if Plaintiff had not insisted on the whole Sum, though he saw the Books, and knew only 8*l.* was due, and yet would arrest Defendant, and Defendant offered to pay the 8*l.* with Costs, but Plaintiff insisted on Costs of a Declon. before it was due; the Writ was not returnable at that Time.

Watson, the Plaintiff's Attorney, said, You must Summon me and I will not attend, and before the third Summons the Declaration will be due.

*Pr. Cur.* Let the Plaintiff pay the Costs of the Arrest in B. R. and the Costs of this Motion and *Pr. Cur.* it is a bad practice in not attending the Judge to get a Declaration allowed, whereas if it is not due when the Summons is taken out to pay Debt and Costs, it will not grow due pending the Summons. Rule Absolute.

This Motion was made on the strength of *Webb v. Bennett*, T. 14 Geo. II. which was a Rule to show Cause why the Plaintiff should not have leave to take out of Court the Sum of 4*l.* 10*s.*, parcel of 5*l.* 10*s.*, brought into Court by the Defendant, pursuant to the said Rule. And why the remainder of the said Sum of 5*l.* 10*s.*, barring 20*s.* should not be left in Court to be repaid to the Defendant, and why the Plaintiff should not have leave to set off the said 20*s.* against the Defendant's demand in the said Action brought by him against the Plaintiff, and why upon the Plaintiff's Receipt of the said 4*l.* 10*s.* out of Court, his Costs in this Action to be Taxed according to a former Rule, should not be paid him or the said Rule be Discharged, which Rule was made Absolute.

Motion by Walker, Serjeant, that Plaintiff might be at liberty to take out of Court the Sum of 19*l.* 8*s.* 6*d.*, parcel of 27*l.* 3*s.*, brought into Court by the Defendant, and why the remainder of the said 27*l.* 3*s.*, being 7*l.* 14*s.* 6*d.*, should not be left in Court to be repaid to the Defendant, and why the Plaintiff should not have leave to set off the said 7*l.* 14*s.* 6*d.* against the Defendant's demand in an Action since commenced by him against the Plaintiff, and why upon the Plaintiff's receipt of the said 19*l.* 8*s.* 6*d.* out of Court his Costs in this Action, including the Costs in this Application, should not be paid by the Defendant or his Attorney, and in support of this Motion was cited *Leech v. Cooper*, *supra*.

On showing Cause by Bolton, Serjeant, (the very day he was called), the Court made the Rule absolute, without Costs on either side, though it was strongly urged by Bolton that the

Plaintiff in the second Action ought to have his Costs to this time in his Action, as this was the same as if Defendant had moved to have paid money into Court which must have been on payment of Costs. And of this opinion was Mr. Justice Blackstone for some time, but the other Judges were of opinion that the Plaintiff in the second action was entitled to no favour or countenance as the second action was totally unnecessary, as he might have had the same justice done him on a Sett-off, and therefore—as he would not make use of those means, but brought another action contrary to the spirit and meaning of the Statute of Sett-off, that Action should be looked upon as vexatious, and consequently would not entitle him to Costs therein. To which opinion Mr. Justice Blackstone then assented. *Grant v. Mills. Mich. 20 Geo. III.*]

Anonymus. *Mich. 11 Ann. 1712.* [6]

Copies of Entries, &c. good Evidence.

*Poff, Lock, v. Hyet*, p. 21, granted to produce *Parish Books. Knight v. Wotton*, p. 26. *Davis v. Edwards*, p. 70.

THE Court was moved for a Rule upon an Officer to attend the Trial with Muster-Rolls, Books, &c. but denied by the whole Court, because such Officer is not subject to the Rule of the Court.

*Note*; Copies of Muster-Rolls, Entries of Custom-house Officers, and all Copies from Entries where the Court has no Jurisdiction, are generally admitted as Evidence, because the Originals cannot be had.

Methwin *versus* Pople. *Mich. 11 Ann. 1712.*

*Borret.*

Declaring by the By.

*Vid. Holmes v. Small, poff*, p. 58, and *Wrecks v. Robins*, p. 131.

IT was held in this Cause, that the Defendant's Attorney is bound to receive Declarations by the By, after a Declaration delivered in the Action on which the Defendant was arrested, but is not bound to receive a Declaration at the Suit of any other person.

Seyliard *versus* Calsburne. Hil. 11  
Ann. 1712.

**J**UDGMENT by Confession entered after the Defendant's Death, but set aside upon Motion; because the Defendant's Death was a Revocation of his Authority, and for that the Defendant could not have an Opportunity of controverting the Validity of the Warrant of Attorney to confess Judgment.

Judgment by Confession set aside because signed after Defendant's Death. But see *Rogers v. Bretton*, *post*, p. 11.

Anonymus. Hil. 11 Ann. 1712.

**A** MOTION was made to stay Proceedings upon an Ejectment for Non-payment of Rent reserved on a Lease; which was granted accordingly, upon paying the Lessor of the Plaintiff his Rent in Arrear and Costs.

Ejectment stayed on Payment of Rent and Costs. See *Stat. 4 Geo. II. c. 28, s. 4.*

[After Judgment against the casual ejector, and before any writ of possession executed, the Court made a Rule to stay proceedings on payment of all rent due and costs; it being an ejectment for non-payment of rent. *Goodtitle v. Holdfast*, 2 Str. p. 900 and *vid. Phillips v. Doelittle*, 8 Mod. Rep. 345, and cases there cited.

Lessor made a Lease reserving a small Rent, with Condition of Re-entry on Nonpayment. Covenant to repair, but no Condition of Re-entry on not Repairing. Lessee died, and Ejectment brought by Lessor. Defendant as Administrator, moved to stay proceedings on bringing the Rent into Court, but on affidavit it appeared it would cost 500*l.* to put the Premises in Repair and the Lessor had no other Remedy to make Good the Repairs which happened in Lessee's Time (there being no Assets) & the Court would not stay proceedings unless Defendant would give Security to repair according to the Covenant of the Lease as well as pay the Rent. *Temple on Dem. of Carew v. Bacchus*, Tr. 6 G., C.B. Ld. K.'s MSS.]

*Stores versus Tong. Hil. 11 Ann. 1712. [7]*

*Borret.*

Costs added  
upon a Postea.

**I**N an Action upon the Case, the Jury upon the Trial having found Damages, but refusing to find any Costs, it was moved that Costs be added, because the Jury are *ex officio* bound to give Costs, and the Court will supply this Defect; and ordered accordingly.

*Valentine versus Dennis. Mich. 12  
Ann. 1713.*

*Cooke.*

No Bail to Writ  
of Error on a  
Bail-Bond,  
tho' it did  
not appear in  
the Declaration,  
that the Action  
was brought on  
a Bail-Bond.  
*Vid. Jackson v.  
Ducket, post, p.  
32.*

**J**UDGMENT on a Bail-Bond, but no Mention in the Declaration that it was on such a Bond; upon a Writ of Error brought the Plaintiff insisted on Bail, alledging, that the Court were not to examine into the condition of the Bond on which the Action was brought: But on the Clerk of the Error's reporting to the Court, that the constant Practice was to examine whether the Bond was given for Payment of Money or not; and upon Examination, finding it was a Bail-Bond, it was held by the whole Court, that no Bail should be given on that Writ of Error.

[Action on a Bond in the Penalty of 40*l.* to Indemnify the Parish against a Bastard Child.

Motion to bring the penalty of the Bond into Court with Costs and that the Bond may be delivered up. Rule granted.

On showing cause it was insisted that this was not in the nature of a Common Bond, but was intended as a lasting permanent Security, to answer every contingency during the time the Child might be Chargeable, like the Case of a Bond for performance of Covenants, which the statutes of 8 & 9 Wm. 3, ch. 11, s. 8, meant should continue to answer subsequent Breaches. *Anon. 1 Vent. 356.* was cited.

On the other side it was insisted that the Statute of King William meant only to relieve the Defendant from paying the whole penalty, and that the Courts have lately gone much further in admitting Motions of this nature for the sake of Justice, as appears by *Gregg's case*, 2 *Salk.* 596 and *Hallett v. East India Company*, 2 *Burr.* 1120, and indeed as to paying penalties in Quitam Actions, before the Statute 4 Ann. ch. 16, s. 13, the Defendant might have been made to pay the whole penalty of his Bond into Court, and the Statute of King William meant only to relieve the Defendant against paying the whole penalty.

*Per Cur.* the Penalty is the admeasurement of all eventual Damages, and so it was in Equity even for a Penalty for the Sale of an Estate, formerly, though now it is otherwise. The Defendant might have acknowledged this Action, but then the Execution could have gone no further than the penalty, and by the Judgment the Bond would have been extinguished. The very process and Declaration only require the Defendant to pay 40*l.* which he owes and unjustly detains, then what injustice can it be to let the Plaintiff receive all he Declares for? so the Rule was made Absolute. *Brangwin and Another v. Perrott*, 2 *W. Black*, 1190.]

Thornby, on the Demise of the Duke and  
Duchess of Hamilton, against Fleet-  
wood. *Hil.* 12 *Ann.* 1713.

*Foley.*

**I**N *Ejectment*, a Special Verdict was found on a Trial at Bar, and thereupon Judgment for the Defendant, and Costs taxed: and after Affidavit of the Demand of the Costs, a Motion was made for an Attachment against the Duchess (the Duke being dead) she being one of the Lessors, for Non-payment of the Costs; and it was alleged, that if the Court did not grant it, the Defendant would be Remediless; [8] for tho' in other Cases a *Disstringas* issues against Peers, yet in this Case no process can go but an Attachment.

An Attachment *quoad* Goods and Chattels against a Peeress for Non-payment of Costs in Ejectment.

But the Court refused to grant an Attachment against the person of the Duchefs, but ordered her to shew Cause why an Attachment as to her Goods and Chattels should not be issued, which Rule was afterwards made absolute.

*Symonds against The Mayor, &c. of Totness. Hil. 12 Ann. 1713.*

*Cooke.*

Effoin in what  
Case allowed.  
1 *Rol. Ab.* 818.  
21 *Ed. IV.* 79.  
b. *Fleta Lib.*  
6. cap. 7, &c.  
*Booth of Real*  
*Actions*, p. 14.  
*Mirror*, cap. 2,  
sec. 30.

**A** MOTION to set aside an *Effoin* cast in this Cause; upon Debate, and hearing Counsel on both Sides, the question was, Whether an *Effoin* lay or not? The Court was unanimously of Opinion, that a Corporation aggregate were not intitled to an *Effoin* in a Personal Action. And it was said no *Effoin* lies in any Personal Action whatsoever, not even where a Peer or Member of Parliament is Party.

[In *Anson v. Jefferson*, 2 *Wils.* 164. An *Effoin* was held void as it appeared on the face of the entry to have been cast by the Defendant's Attorney.

In *Peter v. Reginer*, *Prac. Reg.* 206. An *Effoin* discharged, because cast in a personal action.]

*Anonymus. Hil. 12 Ann. 1713.*

An Heir obliged  
to appear to a  
*Clausum fregit*,  
and may be ar-  
rested thereon.

**A** MOTION to stay Proceedings against an Heir, the Defendant alledging, that an Heir ought to be proceeded against by way of Summons, and could not be arrested upon a *Clausum fregit*, the Three Prothonotaries declared, that formerly there was no other way of proceeding against an Heir but by Summons, &c. but of late Years the Practice had been otherwise, and that an Heir might be arrested upon a *Clausum fregit*, and so held by the whole Court, and that he need not be named in the Writ as Heir.

Edmonds's Case. Hil. 12 Ann. 1713.

Foley.

ONE Edmonds brought into Court by the Under-Sheriff of Herefordshire upon a *Habeas Corpus*, the Distance being 130 Post Miles from London; by the Course of the Court the Under-Sheriff could have but 6*l.* 10*s.* being 1*s.* per Mile; but upon his Affidavit that Edmonds was a dangerous Man, and that he had Notice thereof from several Persons who had Actions depending against him, and therefore was forced to have a Guard of four men, the Court, on [9] Motion, ordered the Under-Sheriff to be paid 10*l.* and told Edmonds, that he must either pay the 10*l.* or be remanded.

Sheriff's Fee for bringing up Prisoners by *Habeas Corpus*. *Vid. King's Case, post, p. 140.* *Cope's Case, post, p. 110.*

[N.B. Prisoner bringing a *Habeas Corpus* must either pay the Sheriff's Fees or be remanded. *Hope's case, Prac. Reg. 219.*]

Anonymus. Hil. 12 Ann. 1713.

UPON a Motion for Leave to take out Execution upon a Judgment, whereon a Writ of Error had been brought, and the Record certified, but the Writ of Error quashed; there arose a question, Whether the Execution should be taken out of the *Queen's Bench*, to which Court the Record had been removed by the Writ of Error, or out of the *Common Pleas*; and in order thereto, whether the *Mittitur* ought not to be struck out of the Roll: The Court made a Rule for the Defendant to shew Cause the first Day of the next Term, why the *Mittitur* should not be struck out, and afterwards the Rule was made absolute.

The *Mittitur* ordered to be struck out of the Roll after the Writ of Error quashed.



Rayner *versus* Arnold. *Trin.* 1 *Geo.* I.

1715.

*Foley.*

Judgment  
amended.

**A** MOTION to amend a Common Judgment in Debt by Confession, in which there was a Mistake, for it was entered *Attach' fuit* instead of *Sum' fuit*; at first the Court made some Difficulty, but afterwards a Rule was made to amend the Record.

Bedford *versus* Cullen, (*Dutton and Wife Vouchees.*) *Hil.* 2 *Geo.* I. 1716.

*Cooke.*

Amendment of  
Writ of Entry.  
*Vid. Laming v.*  
*Bestland, post,*  
*p. 17. Dean v.*  
*Coward, post,*  
*pp. 25, 30.*  
*Shepard v.*  
*Harris, post,*  
*p. 126.*

**M**OTION to amend a Writ of Entry, by putting out *Cowickbury*, and inserting in *Paroch' de Sheering*; it appeared that the Deed to lead the Uses thereof was right; and upon producing [10] several precedents for Amendment, (among which were the following) a Rule was granted (upon great Deliberation) to amend.

*Skinner versus Land, Mich.* 6 *Car.* 1. *Gulston.* A Recovery was agreed to be suffered of Lands in *Alphamton* and *Magna Hermny*, but suffered of Lands in *Alphamton* and *Lamarsh*, and ordered to be amended.

*Foster & ux' versus —, 9 W.* III. *Cooke.* A Fine and Recovery agreed to be levied and suffered of the Manor of *Inkfield*, but by Mistake the same was made of the Manor of *Inglefield*, and ordered to be amended in all the Places both of the Fine and Recovery.

*Freeman v. Montague & ux' Trin.* 4 *Jac.* II. and *Smith v. The Earl of Dorset & al' Mich.* 11 *W.* III. the like Amendment.

*Tregare* versus *Gennings*, *East. 23 Car. II. Wyrley*.  
A Fine levied of Tenements with the Appurtenances  
in *T. C.* in the Parish of *L.* in the County of *C.* in-  
stead of in *T. C.* in the Parish of *St. S.* near *L.* in the  
County of *C.* and ordered to be amended.

*Abney & al* versus *Longueville & al*, *Hil. 5 Ann.*  
*Cooke*. A Fine and Recovery (*in Hil. 35 Car. II.*)  
of Tenements in *P.* in the County of *Wilts*, instead  
of — in *P. Clarendon* and *Clarendon Park* in the  
County of *Wilts*, and ordered to be amended.

*Cooke* versus The Dukes of Hamilton.  
*Hil. 2 Geo. I. 1716.*

IN *Ejection* a Motion to amend a Warrant of  
Attorney after a Writ of Error brought, and  
granted.

Amendment of  
Warrant of At-  
torney, *vid. The*  
*Dutch India*  
*Company v. Hen-*  
*riques*, *post*, p.  
44.

[II] Wills and others *against* Turner and  
others. *Hil. 2 Geo. I. 1716.*

IN Prohibition a Motion was made that the Pro-  
thonotary should not allow Costs, save from the  
Time of the Delivery of the Declaration; and on  
hearing Counsel on both Sides, and reading the Act  
of the eighth and ninth of *W. 3.* the Court unanim-  
ously declared, that the Plaintiff ought to have his  
Costs from the Time of the Suggestion, and of the  
Suggestion itself, and all Costs incident and sub-  
sequent thereto.

Costs in Prohi-  
bition, and Con-  
struction of the  
Act 8 & 9 *W.*  
III. *cap. 11*,  
*vid. Betteson*  
*v. Henckman*,  
*post*, p. 20.  
*Creak v. Pit-*  
*carne*, *post*, p.  
157.

Forward *versus* Beavis. Hil. 2 Geo. I.

1716.

*Prochein Amy.*

**I**N this Cause it was held, that no Admission is necessary to sue by *Prochein Amy*, altho' it has been usually done.

Rogers *versus* Bretton. Hil. 3 Geo. I.

1717.

*Borret.*

Motion to set aside Judgment signed after Defendant's Death refused. But see *Seyliard v. Caffburne*, ante, p. 6.

**A** MOTION to set aside a Judgment signed after the Defendant's Death; it appeared the Defendant died before Judgment was signed, but after the first Day of the Term in which it was signed, and therefore upon hearing Counsel on both sides the Judgment was held good, because all Judgments are such from the first Day of the Term in which they are signed.

[N.B. Judgment by confession upon a Warrant of Attorney may be entered in the vacation as of the term precedent, though the Defendant died in that vacation. *Oades v. Woodward*, *Salk.* 87.

A Defendant, who was sued by Execution for Debt due to his Testator, confessed judgment which was entered up as of Hilary Term, when Testator was alive and it was set aside for irregularity. *Gainsborough v. Follyard*, 2 *Strange* 1121.]

Atterbury and others *against* Prior. [12]*Trin.* 3 Geo. I. 1717.*Foley.*

To file and pass new Writs of Entry and Seisin.

**A** MOTION for Leave to pass Writs of Entry and Seisin in two Recoveries, upon Affidavit and Proof, that the Writs were received by the *Custos*

*Brevium*, and deposited in the Treasury, but spoiled by the Rain getting in. Upon Sight of the *Custos Brevium's* Receipt, and reading the Affidavit and Exemplification and Deed to lead the Uses of the Recoveries, the Court made a Rule that the new Writs should pass the Alienation and the several Offices in this Court without Fine or Fee.

Heatley *versus* Pyott and his Wife.

*Trin. 3 Geo. I. 1717.*

• *Borret.*

**A** MOTION to set aside a Fine upon the Wife's Affidavit, and upon her Examination in open Court, and of the Witnesses to the Deeds, who all declared they never saw the Wife execute the Deeds, and upon Examination of one of the Commissioners upon Oath in open Court, who confessed that the Wife did not acknowledge the Fine, but alledged his Ignorance of the Law; and the other Commissioner absconding; and likewise upon Examination of the Plaintiff and several other Persons, and upon reading many Affidavits, the Court granted an Attachment against *Pyott* the Husband and *Wood* one of the Commissioners, being satisfied the Wife never acknowledged the Fine; and after much Debate they ordered the Matter to be tried upon a feigned Issue, upon which a Verdict being found that the Wife did not acknowledge the Fine, it was afterwards by Rule of Court vacated as to the Wife only.

Motion to set aside a Fine.

1 *Vent.* 30.  
3 *Lev.* 36.

Steward *versus* Harding. *Mich.* 4 *Geo.* I.  
1717. [*Prac. Reg.* 121 *S. C.*]

What Time the  
Plaintiff has to  
declare.

*Regula Cur'*  
*Mich.* 1654,  
sec. 14, *Hil.* 9  
*Ann. reg.* 3.

**A** MOTION to set aside a Judgment because the Declaration was not left in the Office till just before the *Effoin* Day of the third Term. On hearing Counsel of both Sides and upon Report of all [13] the Prothonotaries, the Court were of Opinion, that notwithstanding the Rule of Court seemed to be doubtful, yet where the Defendant does not speed the Plaintiff to declare sooner by giving a Rule for that purpose at the End of the second Term, the Plaintiff shall have till the *Effoin* Day of the third Term to deliver or file his Declaration.

[N.B. Process sued out and served on Defendant 24th April, returnable 6th May, as the 3rd was *Effoin* day of Easter Term. Plaintiff took no steps till 11th November, and then delivered Declaration with notice to plead in four days. Appearance entered for Defendant on 16th November. Plaintiff signed judgment on 26th, and gave notice of executing Writ of Inquiry which was done. On Motion to set aside Judgment and Inquisition first on Irregularity of the return of the Writ, but chiefly as Plaintiff had not declared before the *Effoin* day of Michaelmas Term according to the 3rd rule *Hil.* 9 *Anne*, the Court held (after Inquiry of the Officers as to the practice) that the Plaintiff, by not delivering his Declaration in Time was totally out of Court, and so ordered the Judgment to be set aside without costs. *Higgins v. Whittle, C.B. Hil.* 13, *Geo.* III.]

A person in prison for a contempt of the Court cannot be charged with a Declaration, without leave any more than a Person in custody for a Felony; but if he accepts of the Declaration, and suffers the Plaintiff to proceed, he shall not afterwards set aside the Judgment.]

Cork *versus* Baker. Mich. 4 Geo. I.  
1717. [1 Strange 63 S. C.]

Borret.

**A** VERDICT for the Plaintiff in the Court of *Common Pleas*, on a Declaration in Case, and a Writ of Error sued out, and thereupon a *Certiorari* directed to the *Custos Brevium* to certify an Original *in partes de pli'to transgr*; the *Custos Brevium* returns no Original filed (for tho' a Common (a) Original *de pli'to Transgr* had been left in his Office by the *Cursitor* amongst the Originals of that Term, yet the Plaintiff had entered a *Ne recipiatur* before it was left) upon which the Court of *King's Bench* made a Rule for Mr. *Yates*, the Deputy *Custos Brevium*, to attend and shew Cause why an Attachment of Contempt should not be granted against him. Mr. *Yates* appeared and set forth the whole matter by Affidavits; the Court of *King's Bench* notwithstanding committed him to the Custody of the Marshal; after which, Application being made to this Court for a *Habeas Corpus*, and granted, the Court of *King's Bench* at the same Time made a Rule to bring him into their Court; but that Court discharged their own Rule, and the Court of *Common Pleas* granted a second *Habeas Corpus*; but on the Return Day of the second *Habeas Corpus* the Court of *King's Bench* made a Rule to carry him into their Court on a Day after the Return of the second *Habeas Corpus*; the Marshal brought in the Body on the second *Habeas Corpus*, and returned the Rule of Commitment, and the Rule made on the Return Day of the second *Habeas Corpus*. And Mr. Serjeant *Cheshire* and *Pengelly* appearing for Mr. *Yates*, and citing many

The Deputy *Custos Brevium* committed by the Court of *King's Bench*, but afterwards discharged.

## 24 *Cases of Practice in the*

Cases<sup>1</sup> for his Discharge; the Court remanded him, but ordered him to be brought up on the *Monday* following, and deferred the Consideration of his Discharge till that Day. Afterwards the Writ of Error was nonpross'd by the Consent of the Plaintiff in Error, and Mr. *Yates* discharged.

(a) *Tho' the Want of an Original after a Verdict was aided by the Stat. 18 Eliz. cap. 14, yet an Original erroneous in Substance, or which warranted not the Declaration was not aided before the Stat. 5 Geo. I. cap. 13, whereby it is enacted, "That after a Verdict, no Judgment shall be reversed for any Defect in Form or Substance in any Bill, Writ Original or Judicial, or for any Variance in such Writs from the Declaration or other Proceedings."*

## Strangeways Demandant *versus* Ascough, [14] in Dower. *Mich. 4 Geo. I. 1717.* [*Prac. Reg. 159 S. C.*]

*Cooke.*

Notice to be given of executing a Writ of Inquiry in Dower.

*Ante*, p. 1.

*Reg. Cur' Mich.*  
1654, sec. 21.

**I**N this Cause, the Question was, whether upon the execution of a Writ of Inquiry of Damages in Dower, Notice of Executing that Inquiry should be given; and upon hearing Counsel on both Sides, the Court were of Opinion that Notice ought to be given, and, for want thereof, set aside the Writ of Inquiry; for upon any Writ of Inquiry whatsoever, it is very reasonable that the Party should have an Opportunity of defending himself in respect to the Measure of Damages.

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Pengelly quoted *Bushel's case*, *Vaughan*, 135, and referred to 1 *Roll. Rep.* pp. 192, 219, 220, 245, *Moore* 840. 12 *Co. Rep.* 69. *Salk.* 348. *Carter*, 221. *Habeas Corpus AB*, 31. *Car.* 2, c. 2, s. 8.

[Motion by Wilfon for leave to plead. 1st. *Ne unques accompli*. 2nd. *Ne unques seife*, &c. denied per Gould and Blackstone, *Trim.* 17 *Geo.* 3, *C.B.* I gave no opinion, as it was done in the case of *Robins v. Crutchley* (2 *Wils.* 118, 122, 127), in which I was of counsel with Defendant. *Anderson v. Anderson* (2 *W. Black.* 1157).

In the case of *Hillier v. Fletcher* (2 *W. Black.* 1207), a motion was made by Walker, Serjeant, to plead double in Dower which was refused by Blackstone and myself on the authority of *Anderson v. Anderson*.]

Feild *versus* Walford. *Mich.* 4 *Geo.* I.

[*Prac. Reg.* p. 53, *Comyn.* 264, *Vin.*

*Ab. Tit. Contempt.* (B.) *Pl.* 29, *S. C.*]

*Borret.*

ON a Demurrer, the Question was, whether the Sheriff can take a Bail-Bond upon an Attachment for a Contempt out of this Court. By the Act of the 13 *Car.* II. *stat.* 2. c. 2, a Sheriff is not empowered to take Bail, though the Court or a Judge may take a Recognizance; it is true Persons taken by Virtue of Attachments out of *Chancery* for not appearing and answering, have been usually Bailed; and the Reason is because the Party, upon entering his Appearance and paying the usual Contempts, is discharged of Course; whereas in this Court the Party is to appear in Court *de die in diem*, and be examined on Interrogatories to be exhibited against him; and it is not determined that a Sheriff can take Bail upon Attachments out of *Chancery*, but rather doubted; and in the present Case all the Judges were of Opinion that no Bail could be taken, and gave Judgment for the Defendant.

No Bail Bond to be taken upon an Attachment for a Contempt. 23 *H.* 6, c. 10. *Stauford's P. C.* 73 c. 3 *Leon.* 208. *Stile*, 212, 234. 1 *Vent.* 234. 2 *Vent.* 237. *An Attachment is in the Nature of an Execution.* *Waddington v. Fitch*, post, p. 100. *Barnes*, 64. *S.C.*

[N. B. On a motion for Attachment, Pratt, C. J. declared that all the Judges (on consideration) had resolved that a



Sheriff could not take Bail on an Attachment, but a Judge at his Chambers might. *Anon. Str.* 479.

After final Judgment, it is too late to put in Bail; the Recognizance of Bail plainly imports that it must be entered into before Defendant be condemned in the Action. *Jackson v. Knight, Barnes*, 92.

Lamley, & ux' Exec' &c. *versus* Nichols.  
*Mich.* 4 *Geo.* I. 1717. [*Prac. Reg.*  
 114, S. C.]

*Borret.*

Costs against an  
 Executor on a  
 Non-profs for  
 want of a Re-  
 plication.

*Vid. Hayden v.*  
*Norton, on a*  
*Discontinuance,*  
*post*, p. 79.  
*Eaves v. Ma-*  
*cato, Salk.* 314.  
*Videon & al'*  
*Exec' v. Cooke,*  
*post*, p. 20.  
*Ashins v. Spence,*  
*where this Doubt*  
*is resolved, post,*  
*p. 61.*

IN an Action of the Case on several Promisses laid in the Life-Time of the Testator for Meat, Drink, &c. the Plaintiffs were non-profs'd for want of a Replication; and now upon Motion to set aside the Judgment as to the Entry of Costs which had been [15] taxed upon signing the Non-profs, the Question was, Whether Costs should be allowed or not: The Prothonotaries all agreed that Costs were usually taxed, and the Reason is, because the Plaintiffs themselves had been guilty of a Default; and so likewise on a Non-profs for want of a Declaration, or for want of a Replication to a Plea in Abatement; and the Court held that Costs should be allowed in this Case; but where the Plaintiff, being Executor or Administrator, is nonsuited at the Assizes upon full Evidence, it was doubted whether he should pay Costs.

Goodright *versus* Thurstout, on the Demise of Jones & ux'. Mich. 5 Geo. I. 1718.

Cooke.

A MOTION in Ejectment, that the Lessors should name a Plaintiff who should be liable to pay Costs, because the Lessors themselves were very poor; but denied, for the Lessors are in the Nature of Plaintiffs in any other Action, and ought to be on the same Foot as other Plaintiffs are, and therefore this Motion is constantly denied.

Motion to name a better Plaintiff in Ejectment.

Deighton, on the Demise of Goakman and others, *against* Dalton and others. Mich. 5 Geo. I. 1718.

Cooke.

ON a Motion for Costs for not going on to Trial, it appeared that a Countermand was given on Sunday, the Day before the Commission Day, which it was said would have been good, had it not been on a Sunday; but the Court held that Costs should be allowed.

No Notice or Countermand good on a Sunday. Reg. Car. Mich. 1654, sec. 21.

*Note*; It has since been held that no Notice of Trial or Inquiry or Countermand of Notice shall be good on a Sunday, but the Sunday intervening between the Day of Notice and the Commission Day shall be accounted as any other Day.

See Stat. 29 Car. II. cap. 7. s. 6.

And *vide* the Rule of Court made Mich. 3 Geo. I. by which it is ordered, that no Countermand of Trial at the Assizes shall be good, unless Notice be given two Days before the Commission Day. And *Note*; The Day of Countermand is held to be one of the Days, and no Countermand to be given on a Sunday. *Vid. Bower v. Street, ante, p. 2.*

Plaintiff to give two Days countermand of Notice of Trial.

Anderson *versus* Moreton & ux'. Hil. [16]  
5 Geo. I. 1719.

*Cooke.*

Time of Plead-  
ing to Declara-  
tions on Special  
Writs left *de*  
*bene esse*.

*Vide Reg. 2.*  
*Mich. 3 Geo. II.*  
*Post. Sellar v.*  
*Faceby, p. 68.*  
*Charlton v. Han-*  
*key, p. 95. The*  
*Practice altered.*

ON Motion to set aside a Judgment signed upon a Declaration left in the Office *de bene esse* on a Special Writ in *London*, no Bail being put in, the Defendant insisted to have four Days to plead after the Expiration of the four Days, exclusive of the Appearance Day of the Return, allowed for putting in Bail; and for the Plaintiff it was alledged, that if he could not compel the Defendant to plead in four Days after the Delivery of the Declaration, it was to no Purpose to sue out a Special Writ, because he could not try his Cause within Term, nor would it avail him any Thing filing the Declaration *de bene esse*. The Court not finding that this Matter had ever been settled, would not make the Defendant an Example, but set aside the Judgment; and ordered that the Costs on both Sides should attend the Event of the Trial.

[Leigh St. moved for a Rule to show cause why proceedings should not be stayed with Costs. Writ of Capias sued out 6th November last, returnable the 12th, being the second return. The Writ was delivered on the 10th, at night, being Saturday. On the Monday, Defendant came to Plaintiff's Attorney and offered to pay, when the Attorney's son said he was preparing the Declaration. Thereupon the Defendant's Attorney on the 14th went and took out a summons, and Lord Chief Justice Wilmot made an Order to stay Proceedings on payment of Debt and Costs. The question was whether the Plaintiff could charge the Defendant with costs of the Declaration which had been prepared. After consulting the three Secondaries for their Opinion as to the Practice, the Court (including myself) held that a Declaration might be delivered *de bene esse* on the return day, yet the Defendant could not be charged with it till the day for Appear-

ance, which was the 15th November. *Golding v. Grace* (Nares J. notes, and 2 W. Blackst. 749).

On 7th November Plaintiff filed Declaration *de bene Esse*, and served Notice thereof on Defendant to plead in eight days. On 8th November, Plaintiff gave a Rule to plead. On 11th, Defendant's Attorney entered an Appearance and took Declaration out of the Office. On 17th, Plaintiff signed Interlocutory Judgment without Demanding a Plea, and for want thereof Motion was made to set aside the Judgment for Irregularity. In support of the Judgment it was argued, that as the Declaration was filed *de bene Esse*, and Notice thereof given to Defendant, it was not necessary to Demand a plea of Defendant's Attorney, though he had entered an Appearance and taken Declaration out of the Office. The Court asked the Officers their opinion, who all agreed the Plaintiff ought to have demanded a Plea. Rule Absolute for setting aside the Judgment, but without Costs. Bolton *pr.* Defendant, Adair *pr.* Plaintiff. *Potter v. McCarty*, M. 21. G. 3.]

Hunt *versus* Robinson and others. *Trin.*  
5 Geo. I. 1719.

*Foley.*

**A**N ACTION was brought against a Commissioner of the Land Tax, upon which the Plaintiff was nonsuited, and the Question was whether the Defendant should have treble Costs; the Judge had not certified; notwithstanding which, the Court made a Rule this Term for treble Costs, and directed a Special Entry on the Roll, *viz.* Because upon Examination in Court it appeared, that the Defendant was a Commissioner, and in the Execution of his Office as a Commissioner, pursuant to Act of Parliament.

Treble Costs to a Commissioner upon a Nonsuit, by Virtue of the Land-Tax Act. 1 W. & M. c. 20. s. 32.

Laming *versus* Bestland, (Jubber and [17]  
others, Vouchees.) *Trin.* 5 *Geo.* I.  
1719.

*Borret.*

Recovery  
amended.  
*Vid. Bedford v.*  
*Cullen, ante, p.*  
*9. Dean v.*  
*Coward, post,*  
*pp. 25 and 30.*  
*Cranmer v.*  
*Cranmer, p. 26.*  
*Walter v. Ok-*  
*den, p. 52.*  
*Jenkinson v.*  
*Staples, p. 85.*  
*Foster v. Pol-*  
*lington, p. 121.*  
*Sheppard v.*  
*Harrii, p. 126.*

**A** Motion to amend a Recovery in *Hil.* 1703.  
wherein *West Egleston* and *West Tyneham*  
was put in the Writ of Entry instead of *Egleston*  
*Tyneham*; the Deed to lead the Uses was right;  
*Edward Jubber* one of the Vouchees was dead, the  
other Parties alive and consenting, and it appearing  
that it was the Intent of all the Parties that it  
should be right, and common Recoveries being com-  
mon Assurances, Amendments ought more easily to  
be made than in other Cases; therefore the Court  
ordered it to be amended accordingly.

Hudsfay *versus* Boyes. *Mich.* 6 *Geo.* I.  
1720.

*Cooke.*

Additional Bail  
struck off upon  
justifying the  
Bail first put in.

**I**N this Case Bail was put in before a Judge, and  
excepted against, and other Bail added; the last  
Bail justified before a Judge without giving Notice  
to the Plaintiff's Attorney; the first Bail justified  
in Court, and the Defendant moved to strike off the  
additional Bail, shewing by Affidavit, that the Ad-  
ditional Bail had voluntarily got himself added in  
the Bail-piece, on Purpose to have the Defendant in  
his Power, and surrender her when he thought proper.  
The Court ordered the Additional Bail to be struck  
off.

*Note; Dodswell versus Andrews, Mich. 6 Geo. II. Bail*  
*was changed upon the like Affidavit and Suggestion.*

Buckmaster *versus* Troughton. Mich.  
6 Geo. I. 1720.

**I**N this Cause the Defendant was called upon for a Rejoinder in the Evening, and Judgment was signed the next Morning. It was moved to set aside the Judgment for want of longer Notice. The Court set aside the Judgment on Payment of Costs, because no Time was limited by Rule of the Court, [18] but declared it should be a standing Rule for the future, that no Judgment should be signed till the opening of the Office the next Day in the Afternoon after proper Demands are made in Writing of the Pleadings for want of which such Judgment shall be signed.

In what Time Judgment may be signed after calling for a Plea, &c.

*Vid. Broome v. Woodward, post, p. 54. Home v. Chapman, p. 67.*

Wright *versus* Dixon. Mich. 6 Geo. I.  
1719. [*Prac. Reg. 11. S. C.*]

*Foley.*

**A**N ACTION of Debt upon the Recognizance against Bail; the Defendant was arrested upon a *Clausum fregit* with an *Acetiam in Debito super demand'*; the Plaintiff thereupon proceeded to Judgment. And now on Motion to set aside these Proceedings, the Question was whether the Plaintiff should not have sued by special Writ; the Court held that an *Acetiam in debito* is an ACTION of Debt within the Meaning of the Rule of Court. But that the Defendant, *i. e.* the Bail, must be Arrested at least four Days before the Return of the Writ of Process, so that he may have Time to render the Principal.

An ACTION of Debt on the Recognizance may be brought by a *Clausum fregit Acetiam in debito. Vid. Covert v. Allen, post, p. 24.*

*Reg. Cur. Mich. 1654, sec. 12. Bail to be arrested four Days before the Return. Concerning a Render vid. Vanderey v.*

*Note; In the Case of Davis v. Carter & al, East. 4 Geo. II.*

*Wayles, post, p. 53, and the Cases there cited.*

Cooke. Pursuant to this Resolution, Proceedings against Bail were stayed because they were not served with Process till the Day of the Return.

*Aplin versus Chambers. Mich. 6 Geo. I.*

1719.

*Foley.*

Upon Appearance to the *Exigi facias* the Defendant must plead *instante*.

**I**N this Cause the Question was, what Time the Defendant has to plead after Appearance to the *Exigi facias*; the Court held that he must plead *instante*. And tho' it was objected, that if the Appearance were to an *Exigi facias* returnable the last Return of any Term, the Defendant would have no Opportunity of applying to the Court to bring in Money, change the Venue, or other Matter; but in Answer to that it was said, that the Defendant might, if he had any Reason, apply to a Judge for Relief, but that the Court would not, without manifest Reason, delay the Plaintiff after the Defendant had stood out so many Processes.

*Griffin versus Ferrers and others. East. [19]*

6 Geo. I. 1720.

*Cooke.*

Fine by a deaf and Dumb Person.  
*Vid. Keep v. Bull, post, p. 23.*

**A** Motion that Mr. *Benjamin Ferrers*, a Deaf and Dumb Person, might be permitted to acknowledge a Fine in open Court, upon an Examination to be taken by Signs on the Fingers, upon the Report on Oath of one Mr. *Ralph Ruffel*, who swore he had been used to converse with him in that Manner for seventeen Years and upwards, and that he understood his Meaning perfectly by those Signs: Several pieces of *Ferrers's* Painting were produced

in Court, viz. Pictures of Queen *Anne*, Lord Chancellor *Parker*, and his Own, and all very like the Originals, and agreed to be well Painted and good Pieces.

It appeared likewise he could write his own Name very well and some other Things, yet could read but little Writing, tho' he distinguished several Countries by a Map shewed him in Court, and likewise upon the Oath of Mr. *George Turner*, who swore he had been acquainted with *Ferrers* ten Years, and that he had Painted Mr. *Burchet's* (the Secretary of the Admiralty) Picture, for which he would not take under Five Guineas, and that he believed he understood the Value of Things very well, especially Paintings; and upon great Examination in Court, by *Russell* the Interpreter, about several Matters, to which he in all Appearance made a ready Answer by Signs to *Russell*; and upon reading an Order for the Dismissal of a Bill in *Chancery*, which had been brought to prove his Incapacity to manage his Affairs; and a Decree in *Chancery* appointing a Partition of the Estate; and upon *Ferrers's* appearing to consent, as well by his own Gesture as upon *Russell's* Oath, the Court ordered the Fine to pass, and a Special Rule was drawn up this Term for that Purpose.

*Delmuida v. Bravo. Trin. 6 Geo. I.*

1720.

*Cooke.*

**A** Motion to make a Return to an Original; the Special Original was sued out, but the common Return omitted, which, Time out of Mind, [20] has been constantly made by the Attorney of Course,

The Return of a Special Writ made after the Writ filed.



Anon. *Mich. 7 Geo. I. 1721.*

Prisoners in-  
titled to the  
Poors Box.

See the Rule,  
*Hil. 3 Geo. II.*  
*sec. 16.*

**A** Motion by Mr. Serjeant *Webb*, on the Behalf of three poor Prisoners of the *Fleet*, craving an Allowance out of the Poors Box; the Lord Chief Justice *King* declared, that those poor Prisoners, on making such Oath as is usual, and applying to him at his Chambers, should have an Order for the Allowance.

*Locke versus Hyet and others. Mich.*  
*7 Geo. I. 1721.*

In Prohibition  
Liberty to in-  
spect Parish  
Books. *Vid.*  
*Knight v. Wat-*  
*son, post, p. 26.*  
*Davis v. Ed-*  
*wards, p. 70.*

*Foley.*

**I**N Prohibition a Motion by Mr. Serjeant *Pengelly*, to have Liberty to inspect Parish Books, and to have them produced at the Trial, and granted.

Anonymus. *Mich. 7 Geo. I. 1721.* [22]

Costs denied  
upon an Action  
for Words,  
where less than  
40s. damages,  
tho' the De-  
fendant pleaded  
a special Justifi-  
cation. *Vide*  
*Smithsend v.*  
*Long, ante, p.*  
*2, and Denny v.*  
*Wigg, post, p.*  
*137.*

**I**N an Action on the Case for Words, to which the Defendant pleaded a Special Justification, the Jury having found Damages under 40s. It was moved that the Prothonotary might tax for the Plaintiff Costs *de Incremento*; and it was insisted on as a constant Rule, that in all Cases where there is any Special Pleading, the Plaintiff shall recover his Costs *de Incremento*; but the Court held that it is still an Action for Words within the Statute 21 *Fac. I. cap. 16. s. 6.* and must be governed thereby, and if the Plaintiff does not recover above 40s. he shall have no more Costs than Damages.

Pemple qui tam, &c. *versus* Tinsley.  
*Trin. 7 Geo. I. 1721.*

*Borret.*

**I**N Debt on a Statute of 5 *Eliz. cap. 4. sec. 31.* for exercising a Trade contrary to the said Statute. Upon a Verdict for the Defendant, he Plaintiff moved the Court, that the Defendant should not be allowed any Costs; and upon hearing Counsel on both Sides, the Court seemed to Doubt and took Time to consider till next Term, and then Costs were allowed.

Costs on a *Qui tam* after Verdict for the Defendant. *Salk. 30.* But see *Gynes v. Stephenson, post, p. 87, where on Verdict for the Plaintiff the Court held he should have no Costs.*

Lobb *versus* Dale. *Trin. 7 Geo. I. 1721.*

*Cooke.*

**U**PON a Demurrer set down the last Day of Arguments, it appeared that the Defendant's Attorney had accepted all the Demurrer-Books, but had not delivered them to the Two Puisne Judges; it was agreed that the Course of the Court had always been, that if the Defendant did not deliver the Two Books to the Puisne Judges, then the Plaintiff's Attorney might, and in such Case, the Defendant should not be heard till he had paid for those Books. But the Plaintiff's Attorney in this Case had not delivered the Books to the Puisne Judges, as he should have done; however the Court were unwilling the Plaintiff should be delayed by the Defendant's Attorney's Default; and therefore gave Judgment for the Plaintiff, notwithstanding he had not strictly complied with the accustomed Rule of Practice.

Judgment on Demurrer, tho' neither the Defendant nor Plaintiff had delivered the Books to the two puisne Judges. *Reg. Cur'. East. 27 Car. 2.*

*Note;* The Practice has since been altered by a Rule of

Court, made *Mich. 6 Geo. II. reg. 3*, which directs that the Plaintiff's Attorney shall deliver all the Demurrer-Books to the Judges; and unless the Defendant's Attorney pay for two of the Books at least two Days before the Day of Argument, the Defendant shall not be heard by his Counsel. *Vid. Lawson v. Hambleton, post, p. 35, Wilson v. Spencer, post, p. 72.*

Keep & al' *versus* Bull & ux'. *Trin.*  
7 Geo. I. 1721.

Lond. ff.

A Fine by a  
Deaf and Dumb  
Person. *Vid.*  
*Griffin v. Fer-*  
*rers, ante, p. 19.*

A Fine was to be acknowledged by a Deaf and Dumb Person; and upon his Wife's making it appear to the Court that she could converse with him by Signs, and give evident Proof of his Consent to what was proposed; and which was done to the Satisfaction of the Court; the Fine was ordered to pass.

Wright *versus* Dingley. *Mich. 8 Geo. I.*  
1721.

*Vid. Wright v.*  
*Dixon, ante, p.*  
*18. Vandereff*  
*v. Waylet, post,*  
*p. 53.*

THE Court held, that in an Action of Debt upon a Recognizance, the Bail have till the Rising of the Court on the Appearance-Day of the Writ, to render the Defendant.

Anonymous. *Easter 8 Geo. I. 1722.*

Plea in Abate-  
ment. *Vid.*  
*Biddleston v.*  
*Acherley, post,*  
*p. 63.*

IT was held by the whole Court, that a Plea in Abatement is void, if not delivered within four Days after Declaration delivered or left in the Office, tho' no Rule to plead be given.

[24] Covert *versus* Allen. *Trin.* 9 *Geo.* I.  
1722.

*Borret.*

**A** Motion to stay Proceedings in an Action of Debt on a Recognizance, because a Writ of Error was brought upon the Original Judgment; the Court were unanimous that the Plaintiff might proceed to Judgment, but Execution to stay till the Error was determined.

Action of Debt on the Recognizance after a Writ of Error brought; *sed quere, & vide Newman v. Butterworth, contra, post, p. 112.*

Beck *versus* Nicholls. *Trin.* 9 *Geo.* I:  
1722. [Gilb. ca. Eq. 197. *Str.* 577.  
*S. C.*]

*Foley.*

**A**N ACTION of Trespas for breaking and opening Doors, and breaking and spoiling Locks and Bolts, and for beating and wounding the Plaintiff. Verdict for the Plaintiff, and 2s. 6d. Damages. The Court was moved for Costs *de Incremento*, but denied, because this is a Trespas against the Freehold, and an Assault and Battery joined, and in the first, the Title might have come in Question; and therefore in both Cases it was requisite that the Judge should certify, in order to entitle the Plaintiff to full Costs, which he had not done.

No Costs in an Action of Trespas tho' Special. *Stat.* 22 & 23 *Car.* II. c. 9, s. 136. *Vid. Smithsend v. Long, ante, p. 2. Watkinson v. Sawyer, post, p. 44. Parke v. Davis, p. 49. Dixie v. Somersfield, p. 86. Carruthers v. Lamb, p. 108. Thomlinson v. White, p. 117. Ibbotson v. Brown, p. 149.*

Rositer *versus* Bolting. *Trin.* 9 *Geo.* I.  
1722.

*Cooke.*

**T**RESPASS for pushing the Tap out of a Barrel, by which means the Beer was spilt, and Da-

Costs in Trespas. *Stat.* 22

§ 23 Car. II. c.  
9. s. 136.  
*See cases referred  
to in Beck v.  
Nicolls, supra.*

mages found under 40s. The Court ordered full Costs to be taxed, for this is not within the Statute; for no Freehold could come in Question, and it is merely an Injury to the Plaintiff's Personal Property.

Miller, Serjeant at Law, *against* Seagrave [25]  
and his Wife. *Hil.* 10 Geo. I. 1723.

*Foley.*

No Costs in  
Formedon after  
Demurrer, and  
Judgment for  
the Defendant,  
on Stat. 8 & 9  
W. III. c. 11.  
4 Jac. I. c. 3.  
*Vid. Anon. ante,*  
*p. 4, and Aplin*  
*v. Constable, post,*  
*p. 35.*

*Salk. 194.*

**I**N Formedon in Remainder, Judgment was given for the Tenant upon Demurrer; the Question was whether Costs should be given according to the Act of the 8th and 9th of W. III. cap. 11. s. 2. It was insisted by the Counsel for the Demandant, that the Tenant ought not to have Costs, because if the Demandant had recovered he could have had none, and so in Abatement, tho' after Demurrer, because the Plaintiff should have had none, since he recovers no Damages, the Judgment not being final, but only a *Respondeas ouster*, and tho' the Act of Parliament is general, that after Demurrer, and Judgment for the Defendant, he shall have his Costs; yet in the Case of Abatement, because the Plaintiff is intitled to none, neither shall the Defendant have any Costs, within the Meaning of the Act; the Intent of the Statute being only to extend the Defendant's Remedy for Costs to Demurrers in such Actions and Cases, where Costs were before recoverable upon a Verdict or Nonsuit.

*So in Quare Im-*  
*pedit, ante, p. 4.*

And tho' in Prohibition after Demurrer joined the Defendant is always allowed his Costs; yet this is because Costs are recoverable therein upon a Verdict or Nonsuit, to which Cases only the Act was

intended to extend. *Cur' advisare vult.* Lord Chief Justice *King*, Mr. Justice *Dormer*, and *Denton* inclined against Costs; Mr. Justice *Tracey* for Costs. Afterwards this Point came on again, *Trin.* 10 *Geo. I.* and was solemnly debated, when the Court still inclined to allow no Costs, but took further Time to consider of it; and at last resolved that no Costs should be allowed.

Dean & al' *versus* Coward, (Bigg, *Jun. Vouchee, de terris in Com. Berks.*) *Trin.* 10 *Geo. I.* 1724. [*Post*, p. 30, *Comyn Rep.* 386, *Vin. Ab. tit. Amendment (L.a.) pl.* 18. *S. C.*]

**A** MOTION to amend a Recovery by putting in these Words, in *Paroch' s<sup>c</sup>e Marie in Wallingford*, and in *Paroch' de Wargrove*, and a Rule to shew Cause granted; this was afterwards opposed strongly, King Chief Justice, *Dormer* and [26] *Denton* against the Amendment; but *Tracey* seemed for it, tho' the Parties were all Dead, and Purchasors in the Case. It was denied chiefly because, if the Amendment was made, the King would lose his Fine for the Parcels to be inserted; but see the same Case after, *Mich.* 13 *Geo. I.* where the Amendment is granted; and see *Jenkinson versus Staples*, *post* p. 85.

Amendment of a Recovery denied. *Vid. Bedford v. Cullen, ante*, p. 9, and *Laming v. Beßland*, p. 17 and cases cited.

*See the next Case.*

**Cranmer v. Cranmer, (Boucher Vouchee, de terris in Com. Wilts.) Trin. 10 Geo. I. 1724.**

Amendment of a Recovery denied. *Vid.* cases cited in preceding case.

**M**OTION to amend a Recovery by putting in *Restoria de Lea & Decima eidem spectan'*; it appeared to be Right in the Deed to lead the Uses, and moved at the Vouchee's Request. *Chief Justice*: The King will lose his Fine, so the Amendment was denied.

**Walpole v. Robinson. Mich. 11 Geo. I. 1724.**

To amend Issue of *Comperuit ad diem*. *Vid.* *Eason & ux' v. Wilkins & ux'*, *post*, p. 106.

**I**N Debt upon a Bail-Bond, the Defendant pleaded *Comperuit ad diem*; And now a Motion was made to amend the Issue, in which the Condition of the Bail-Bond is misrecited, by making it agreeable to the Bond, on Payment of Costs; which was granted accordingly.

**Knight v. Wotton. Hil. 11 Geo. I. 1725.**

*Borret.*

To inspect the Publick Books of the Dean and Chapter of St. Paul's &c. and take Copies. *Vid.* *Anon. ante*, p. 6; *Lock v. Hyet*, p. 21; *Davis v. Edwards*, *post*, p. 70.

**A** MOTION by Mr. Serjeant *Glyde*, for Liberty to inspect the Publick Books of the Dean and Chapter of St. Paul's and Bishop of London, to see if there be any Confirmation entered of the Lease granted by the Archdeacon of Colchester, and to take Copies; and a Rule was granted accordingly.

[27] Clarke, un' Attorn', v. Godfrey. *Easter*  
 11 Geo. I. 1725. [*Prac. Reg.* 36.  
 1 *Str.* 633, S. C.]

*Borret.*

A CASE made before Lord Chief Justice King, upon a Trial at *Nisi prius*, in an Action brought by the Plaintiff as an Attorney, for Fees, to which the Defendant had pleaded *Non Assumpsit*; the Bill was not delivered till after Notice of Trial; the Question was Whether the Bill ought not to be delivered before the Action brought?

When an Attorney was to deliver a Bill in Order to sue for his Fees. *Vid. Griffith v. Squire, post, p. 58; Marsh v. Carter, post, p. 109.*

In *Trinity Term* following it was again moved, and Mr. Justice *Tracey* said, he thought that the Defendant ought to have pleaded, that the Bill was not delivered according to the *Stat. 3 Jac. I. s. 1*, which enacts, *That every Attorney shall deliver a true Bill to his Client, before he shall charge him with any Fees.* And this Matter having been debated in Court several Times, and it being insisted that the Practice had been for many Years to deliver a Bill any Time before the Trial; the Court was of Opinion that this was contrary to the Act of Parliament, and resolved for the future that no Action be brought for Fees, till after a Bill delivered.

It is now settled by the Act of 2 Geo. II. *cap. 23, s. 23*, for the better Regulation of Attornies and Solicitors, that no Attorney or Solicitor shall commence or maintain any Action for the Recovery of any Fees, Charges or Disbursements, at Law or in Equity, till the Expiration of one Month after the Delivery of his Bill to the Party or Parties to be charged therewith, or left for him, her or them, at his, her or their Dwelling-house, or last Place of Abode; written in a common legible Hand, and in the *English* Tongue, (except Law-Terms and Names of Writs) and in Words at Length, (except Times and Sums) and subscribed by the Attorney.



Allgood v. Howard. *Easter* 11 G. I.  
1725.

*Cooke.*

A Prisoner on a Contempt can't be charged with a Declaration without Leave of the Court. *Vid. Pepper v. Bawden, post, p. 31; Stat. 8 & 9 W. III. cap. 27. s. 13.*

A MOTION was made to stay Proceedings against the Defendant, who had been charged with a Declaration at the Plaintiff's Suit, while he remained in the *Fleet* Prison, for a Contempt of the Court; it was insisted that the Plaintiff could not deliver a Declaration against a Defendant in Prison for a Contempt, without having previously obtained the Leave of the Court for that Purpose; of which Opinion were the Court, and ordered Proceedings to stay accordingly; but the Court being now moved for that Purpose, gave Leave to deliver a Declaration *de novo* against the Defendant.

*Note;* It was also held that a Person in Prison for Felony, [28] &c., cannot be charged with a Declaration, without Leave of a Judge, the Attorney General, or proper Court.

Colt, Ar. v. Hall, Ar. *Trin.* 11 Geo. I.  
1725.

Motion to set aside an Exigent returned before the *Quarto die post*.

A MOTION to set aside the Return of the Exigent, and that the Defendant might be admitted to supersede the Exigent (altho' the Sheriff had returned the Defendant Outlawed) because the Defendant had appeared before the *Quarto die Post*, and insisted that he had four Days after the Return of the Exigent, to appear and supersede it. The Principal Question was, Whether, the Defendant not having appeared before, or on the Return-Day, and the Sheriff having actually returned the Defendant Outlawed before the Superfedeas issued, such Return

*Ante, p. 18.*

should not be conclusive to the Defendant; or whether the Defendant had not four Days after the Return of the Exigent to appear, and put in Bail, and therefore the Outlawry on the Return-Day irregular (period). For the Plaintiff, was cited a Case in Point, which had been determined lately in the *King's Bench*, between *Sansome* and *Gore*, and there Lord Chief Justice *Raymond* declared, that the Return of the *Exigi facias* on the Return-Day was conclusive, and refused to relieve the Defendant. But the Court, on hearing Counsel on both Sides, (notwithstanding that Case) held that, by the Practice of this Court, Defendants had always had till the *Quarto die post* to appear to the *Exigent*; and ordered that the Outlawry should be discharged at the Plaintiff's Expence, but gave no Costs to the Defendant.

[Motion to set aside a Superfedeas which Issued before the Return of the Exigent, Bail not having been put in before it Issued. Rule being granted to show Cause; on showing Cause the Question was :—

Whenever by the Course of this Court it was necessary to put in Bail, as the Outlawry was not completed.

Davy, Serjeant, argued it was not necessary, and insisted that the Rules of the Court had made the distinction between its Issuing before and after the Outlawry completed. By *Reg. Cur. Mich.* 17 *Car.* 2, for the better Execution of the process of Outlawry and for preventing Abuses by neglect of the same, it is ordered that upon every Writ of Exigent, if a Superfedeas be not put in at or before the return thereof, it shall not be allowed as an appearance untill Costs are paid. After the Outlawry, no Superfedeas to issue to reverse it, till special Bail is put in, if damages are 20*l.* and Costs paid. So *Reg. Cur. Trin.* 2 *Jas.* 2, as to reversing Outlawry after the Death of the Plaintiff, special Bail must be put in; and on every Writ of Exigent Costs must be paid. If the Superfedeas be not put in at or before Day of Appearance, and on reversing of every Outlawry Special Bail (if action amount to 10*l.*) must be given. Here was no Process to Arrest, or at least none was delivered to the

Sheriff, but all the Exigents, Ali<sup>o</sup>, and Plur<sup>o</sup>, taken out together; and it hath been held an Appearance before the *Quarto die post* is sufficient.

Besides the Defendant's Attorney referred the Plaintiffs to the Rules of the Court and he seemed satisfied, and made an offer to save expense. Davy cited *Campbell v. Daley*, 3 Burr, 1920.

Hill, Serjeant, *cont.* Here it is sworn the Defendant absconded and fled, so he could not be Arrested, and it would be hard if he by his Absconding should avoid putting in Bail, as it would be taking advantage of his own wrong, and it appears by the Precedents in the Register that the Superfedeas states an Appearance.

Grey, Ch. Justice: It appears by *Dyer*, 222, 223, Superfedeas is an appearance, and so are the Cases of *Peach v. Wadland*, *Barnes*, 319, *Prac. Reg.* 274, *S. C.*, and *Challing v. Fox*, 326, the Superfedeas is in itself an Appearance, and in the latter case the Court was not willing to strip the Plaintiff of an Advantage he had fairly and regularly obtained. Before a Defendant is returned Outlawed, he may supercede the Exigent, though founded on a special Original, and though the Debt be ever so large (as the old practice still continues). But after he is returned Outlawed, he cannot reverse the Outlawry without Bail, who are to be absolutely bound to pay the Money without power to render the Principal in their Discharge.

But, it being suggested the practice of B. R. was otherwise, the Court directed it to be inquired into. Rule after discharged. *Smith and Mitchell v. Corran*, Hill, 14 G. 3 C. B.

Before Allowance of Writ of Error or reversing Outlawry by Plea or otherwise, Bail to be put in not only to Answer Plaintiff in some suit in a new Action to be commenced by him for the Cause mentioned in the first Action, but also to satisfy the condemnation if the Plaintiff shall begin his Suit before the end of two Terms next after Allowance of Error, or avoiding Outlawry. *Reg. Cur.* 12 G. 1.

A Peer sued to Outlawry as a common person may have a Writ out of Chancery reciting that he is a peer and that no other process shall be awarded against him than such as shall be against a peer. *Lord Savill's Case*, *Cro. Car.* 205.

[29] Anonymus. *Mich.* 12 Geo. I. 1725.

IT was said by the Court, that upon or before the Allowance of any Writ of Error, or reversing any Outlawry, the Defendant must still enter into a Recognizance, with Condition to satisfy the Condemnation Money, according to the *Stat.* 31 *Eliz.* cap. 3. *sect.* 3.

Recognisances on Outlawries. *Vide Stat.* 4 & 5 *W. & M. c.* 18.

Dockary v. Lawrence. *East.* 12 G. I. 1725.

*Borret.*

A MOTION to amend a Plea in Abatement, by putting in *Culpabilis* instead of *Capitalis*, which appears to be only a Misprision of the Clerk, and two Counsel heard on each Side. For the Plaintiff many Cases were cited against Amendments. The Defendant's Counsel cited none.

Plea not amended in Abatement. *Salk.* 52, 49. 5 *Mod.* 69. *Smith v. Sundamore*, 2 *Keb.* 70, where Amendment was said to have been denied.

*Eyre* Chief Justice: Pleas in Abatement have generally been denied to be amended, because they are dilatory and do not go to the Right of the Action, and it will be dangerous to make a Precedent, wherefore the Amendment was denied.

Hingham v. Collin. *Easter* 12 Geo. I. 1726.

*Borret.*

ON a Motion to set aside a *Non-pros* for want of a Declaration, because the Defendant's Attorney had not called for a Declaration the same Term on which the Writ was returnable, but had called for a Declaration, and signed a *Non-pros* the Term

In what Time a *Non-pros* may be signed for want of a Declaration, *Reg. Cur' Hil.* 9 *Ann. Reg.* 3. *Vid. Harvey v. Weston*, *post*, p.

53; *Pace v. Ellison*, p. 83; *Jones v. Hergess*, p. 110.

after: The Court were of Opinion it was a good Calling, and held the *Non-pros* to be regular; afterwards by Consent it was set aside on Payment of Costs.

Deane & Al' v. Coward, (Bigg, Jun. [30]  
*Vouchee, de terris in Com' Berks.*) *Mich.*  
 13 Geo. I. 1726. [*Ante* p. 25, S. C.]

Recovery  
 amended.

*Vid. Bedford v. Cullen*, ante, p. 9; *Laming v. Bestland*, ante, p. 17; *Cranmer v. Cranmer*, ante, p. 26; where an Addition of Parcels was denied; *Walter v. Oke-*  
*don*, post, p. 52; *Jenkinson v. Staples*, post, p. 85; *Foster v. Pollington*, post, p. 121; *Shepherd and Harris*, post, p. 126.

THE Motion made in *Trinity Term* 10 Geo. I. for amending a Recovery, was this Term revived; the Judges being changed, instead of *King, Tracey, Dormer* and *Denton*, now *Eyre, Price, Page* and *Denton*; the chief Objection against it was, that the King would lose his Fine by such considerable Wills being added: But the Court declared unanimously now, that tho' the Parties were dead, yet as it appeared by the Deed that it was with their Consent, the Wills omitted by the Clerk should not prejudice a Family; and therefore it being the Intent of the Parties at that Time, the Court ordered the Amendment to be made, and so made the first Rule absolute.

Many Precedents were cited, and Rules for Amendments produced, the chief of which relating to this Head, were as follows, viz.

*Wrightwick & al' versus Masters*, *Trin.* 13 Car. I. A Recovery of three Messuages in *New Church, L.* and *M.* but *New Church* totally omitted; an Amendment was ordered.

*Drake & al' versus Biddulph*, *Mich.* 13 Car. I. *Gulston*. A Fine prosecuted (*East.* 13 Car. I.) of two Messuages and one Garden, that a Recovery thereof might be had; but by Mistake (in *Trin.* following)

the Recovery was suffered of one Messuage and one Garden, and now ordered to be amended.

*Courtney versus Blake, Hil. 3 Ann. Borret.* The Writ of Covenant and all Entries and Proceedings thereon amended, by inserting the Words (*& Know-*  
*ston.*)

*Parker & al' versus Cotten & ux', Mich. 1650.*  
The Village of *W.* omitted in a Fine levied *Trin.* 1649. but ordered to be inserted as well in the Writ of Covenant as the other Parts of the Fine, on the Oath and with the Consent of the Deforcant.

Cock v. Green. *Mich. 13 G. I. 1726.*

[31] *Foley.*

**A** MOTION to set aside a *Scire Facias* against Bail in *London*, upon a Recognizance taken in *Serjeants Inn* in *Fleetstreet, London*, and Recorded at *Westminster*; the Court were of Opinion that the *Scire Facias* might issue either into *London* or *Middlesex*; but it was said, that in the Case of a Recognizance taken in the *King's Bench*, the Entry is *coram Domino Rege apud Westm'*, and therefore must be in *Middlesex* only.

*Scire Facias* in *London* on a Recognizance taken in *Serjeants Inn, Fleetstreet*, and held good. *Salk.* 564, 600, 659. *Vid. Dalton v. Teasdale, East. post, p. 53.*  
See *Cases in Law and Equity*, 290.

Smith v. Anderton. *Mich. 13 G. I. 1726.* [*Prac. Reg. 342. S. C.*]

**A** COPY of a Special Original was served on the Defendant, and the Plaintiff proceeded thereon according to the *Stat. 12 Geo. I. cap. 29*, but all was set aside by the Court, for a Copy of the *Capias* should have been served.

*Vid. Peter v. Reginer, Barnes, 410.*  
*5 Geo. II. c. 27, s. 5.*

Pepper v. Bawden, Ar'. Mich. 13 Geo. I.  
1726.

*Borret.*

Declaration delivered to a Prisoner, and accepted, and Judgment before Complaint, held good. *Vid. Allgood v. Howard, ante, p. 27.*

**A** DECLARATION delivered to a Prisoner in the *Fleet*, who before stood charged with Contempts in *Chancery*; the Defendant accepted of it, and let the Plaintiff proceed to Judgment, and then moved the Court to set aside that Judgment upon the standing Practice, that no Proceedings should be against a Person charged with Contempts, without Leave of the Court first had; but the Court, on hearing Counsel on both Sides, declared that altho' the Plaintiff had not applied for Leave, yet the Defendant having accepted of the Declaration, and suffered Judgment to go against him before he complained thereof, he had waived the Advantage which he might have taken of the Irregularity, and should be bound by it, and therefore they discharged the Rule which had been granted to shew Cause.

Where Special Bail must be put in to an Action of Debt upon a Judgment. *Vid. Valentine v. Dennis, ante, p. 7; Desfleur v. Tut, post, p. 34; Revel v. Snowden, p. 77; Stat. 12 G. I. c. 29; Weyman v. Weyman, Barnes, p. 71; Crutchfield v. Seyward, 2 Wils. 93.*

Jackson v. Ducket. Hil. 13 Geo. I. 1727. [32]  
[*Prac. Reg. 54. S. C.*]

*Cooke.*

**I**N an Action of Debt upon a Judgment, wherein above 10*l.* had been recovered, the Question was, Whether the Defendant should be obliged to put in Special Bail? The Court were of Opinion, that if there was Bail in the Original Action, then no Bail is required in the Action upon the Judgment; but if no Bail in the Original Action, then Bail is to be put in where the Debt is above 10*l.* and an Affidavit made thereof according to the late A& of Parliament.

Turner v. Shrimpton. *Hil.* 13 G. I.  
1727. [*Prac. Reg.* 126. S. C.]

*Cooke.*

A DECLARATION was delivered to the Defendant, whereas the Plaintiff's Attorney knew who was Attorney for the Defendant; the Court declared that such Delivery was irregular, and ordered an Imparlance; for he should have delivered it to the Defendant's Attorney, or have left it in the Office, and given Notice thereof to the Attorney.

Declaration delivered to the Defendant, not good if his Attorney is known. *Vid. Joy v. Francia, post, p. 55.*

H. Englefield, per Catharinam Englefield prox' Amicam, v. Round. *Hil.*  
13 Geo. I. 1727.

*Cooke.*

A MOTION that the *Prochein Amy* should pay the Costs taxed for not proceeding to Trial; and upon hearing Counsel on both Sides, it was ordered accordingly.

*Prochein Amy* to pay Costs for her Default. *Vid. Lamley v. Nicbols, ante, p. 14, and cases there referred to.*

And the Lord Chief Justice declared that every *Prochein Amy* is made so by their own Consent, and that they, as well as Guardians and Executors or Administrators, are liable to pay Costs for their own Default.

Note; *Roper*, by next Friend, against *Harrison*, Mich. 10 Geo. II. on a Nonsuit; it was likewise resolved that the *Prochein Amy* should pay Costs.

[An Infant Lessor is liable to an Attachment for non-payment of costs, where he is an unsuccessful Plaintiff against a Defendant in Ejectment. *Thrustout Dem. Dunham v. Percivall, &c. Barnes, 183.*]



Carter, Ar', *versus* Dormer, Ar', *Hil.* [33]

13 *Geo. I.* 1727.

Venue not  
changed after  
Plea pleaded.  
*Vid. Treasure v.*  
*Wright, post, p.*  
*57, and cases*  
*there referred to.*

*Cooke.*

**A** MOTION to change the Venue after Plea pleaded and Notice of Trial given, but denied by the whole Court.

Rayner *v.* Stamp. *Hil.* 13 *Geo. I.* 1727.

*Borret.*

Attachment  
against a Bailiff  
for retaking the  
Defendant on a  
*Sunday*.  
Exception  
against Bail.  
*Vid. Grimes v.*  
*Clever, post, p.*  
*145.*

**U**PON a Motion against a Bailiff of a Liberty, for retaking a Defendant on a *Sunday* that had given insufficient Bail; the Court seemed to be of opinion that he might retake the Defendant on a fresh Pursuit; but in this Case, Bail was put in above, but no regular Exception taken at the *Filacer's* Office, which ought to have been done; so an Attachment was granted against the Bailiff.

*Busby v.*  
*Walker, post,*  
*p. 55.*

*Note*; Exception against Bail must be entered in the Bail-book or upon the Bail-piece, for no Exception by Notice is good without that is first done.

[A Bailiff cannot take a person on a *Sunday*, not even on a voluntary escape. *Brookes v. Warren.* 2 *W. Black*, 1273.]

Watson *v.* Jordan, an Attorney. *Hil.*

13 *Geo. I.* 1727.

*Cooke.*

An Information  
on the *Stat.*  
12 *Geo. I. cap.*  
29, s. 4, against  
the Defendant  
for practising

**U**PON an Information against the Defendant for practising as an Attorney after Conviction of Subornation of Perjury, upon hearing Counsel on both Sides, on a Summary Examination, pursuant to the Act of the 12th of *Geo. I. cap. 29, s. 4*, several

Variations were insisted upon, viz. *Contrefur* for *Contrafactur*, in the Recital of the Commission of Oyer and Terminer, and the Word *Majorum* instead of *Majorem*, and a Variance between the Issue delivered and the Issue entered on the Roll, viz. *Woolstafton* instead of *Woolaston*, and the Word *Regnorum* left out of the Record; and that the Proceedings ought to be as strict as other Criminal Proceedings at Common Law. On the other Side it was said, that whatever Variance there is, it appears that the Persons in Commission had Power to try the Crime of which he was convicted; Afterwards another Objection was taken, that the Information says, *Contra formam Statuti*, whereas it does not appear that the Defendant has acted contrary to the Statute, for tho' the Act says, if he shall practise he shall be transported, yet it is not enacted that he shall not practise.

after Conviction  
for Suborna-  
tion of Perjury.

[34]

*Note*; There being no restraining Words in the Statute to support this Information, the Plaintiff did not proceed further therein.

*Delafield v. Jones. Hil. 13 Geo. I. 1727.*  
[*Prac. Reg. 345. S. C.*]

*Foley.*

THE Court declared that the Service of Procefs by a Bailiff, who could neither write nor read was not good, and that the *Stat. 12 Geo. I. c. 29*, intended that Procefs should be served by literate Persons, because it directs that Affidavit shall be made of the Service of a Copy of the Procefs.

Procefs to be  
served by a  
literate Person.  
*Stat. 12 Geo. I.*  
*cap. 29.*

Farmer v. Jenkinson. *East.* 13 G. I.

1727.

*Cooke.*

No Declaration  
to be delivered  
to a Prisoner  
after two  
Terms. *Reg.*  
*Cur. East.* 8  
*Geo. I. Hil.* 14  
& 15 *Car.* 11.  
*Reg.* 3.

THE Court declared that where a Defendant being in Custody is intitled to a *Supersedeas*, the Plaintiff can't detain him by delivering a Declaration, tho' the Defendant neglects to procure himself to be superseded.

N. B. *Vide Robins v. Wigley, Barnes, 369, and Webb v. Dorwell, Barnes, 400.*

Deflowr v. Tutt. *Easter* 13 Geo. I.

1727.

*Cooke.*

Bail, *ante*, p. 32.

ON a Bottomry Bond for Payment of Money *inter alia*, the Court inclined to think the Defendant should give Bail.

Laycock v. Arthur. *Easter* 13 G. I.

1727.

*Cooke.*

*Scire facias*  
against Bail.  
*Vid. Price &*  
*Selby v. Lewis,*  
*post*, p. 114.

THE Court held, that in Order to charge the Bail, a Ca' Sa' against the Principal must be left with the Sheriff four Days before it is returnable.

[35] Jennings v. West. *Easter* 13 G. I.  
1727.

*Cooke.*

**A** MOTION to set aside an Execution executed: The Case was, the Defendant suffered Judgment by Default, and staid till after Execution was sent down into *Dorsetshire*, and then got a Writ of Error allowed, and served the Agent with the Allowance thereof, and tho' it was impossible to stop the Execution in *Dorsetshire*, the Writ having been sent down some Time before; yet the Court set aside the Execution, and ordered Restitution, and would not give the Plaintiff his Costs; for the Allowance of a Writ of Error is a *Superfedeas* from the Time of the Allowance, tho' the Sheriff executes the Writ before Notice thereof was given; and yet neither the Plaintiff nor his Attorney, nor Agent, nor the Sheriff, were blameable for any Misconduct.

Execution executed, yet a Writ of Error being allowed before it was executed, and Notice only to the Agent, set aside. *Vid. Miller v. Miller, post, p. 39.*

Lawson v. Hambleton. *East.* 13 G. I.  
1727.

*Cooke.*

**T**HE Court held, that in all Cases the Plaintiff's Attorney may sign Judgment, for refusing to pay for the Copy of an Issue or Demurrer-Book, except where the Defendant is a Prisoner, and in that Case he is restrained from signing it, only where no Attorney appears to be concerned for the Prisoner.

Judgment for not paying for Issue or Demurrer-Book. *Vid. Lobb v. Dale, ante, p. 22; Wilson v. Spencer, post, p. 72.*

*Aplin v. Constable. Trin. 13 G. I. 1727.  
Entered Trin. 12 G. I. Rot. 652.*

*Foley.*

Costs upon a  
Nonsuit at the  
Assizes upon an  
Issue in Abate-  
ment. *Vid.*  
*Anon. ante, p.*  
*4; Miller v.*  
*Seagrave, ante,*  
*p. 25.*

UPON a Rule made *East. 13 Geo. I.* for the Plaintiff to shew Cause why Costs should not be taxed upon a Nonsuit at the Assizes; on hearing Counsel on both Sides, it appeared that the Nonsuit was on an Issue in Abatement, and the Court held clearly, that upon a Nonsuit on such an Issue, the Defendant shall have his Costs, for if it had been found for the Plaintiff, it would have been Peremptory, and he should have had his Costs; and altho', if the Defendant has Judgment on a Demurrer in Abatement, he shall have no Costs, yet this is because the Suit would not have been ended by such Demurrer, in case Judgment had been given for the Plaintiff, but a *Respondeas Ouster* only must have been awarded, upon which the Plaintiff should have had no Costs. [36]

*Lane and others v. Wilkinfon. Trin.  
13 Geo. I. 1727. [Prac. Reg. 250.  
S. C.]*

Money paid  
into Court.  
*Vid. Anon. ante,*  
*p. 5, and cases*  
*there cited.*

MONEY being brought into Court on the Common Rule, and the Plaintiff nonsuited, the Defendant moved to have the Money out of Court; but the Motion was denied; for he paid it into Court, as knowing and being conscious that he owed the Plaintiff so much, and therefore the Plaintiff shall have it.

Bristow & al' v. Dickon. *Trin.* 13 *Geo.* I.  
1727.

*Borret.*

THE Court held that no *Capias utlagatum* can be sued out after the Death of the Defendant.

*Note*; In this Case the Writ was tested after the Death of the Defendant.

*Cap' utlagat'*  
not good, be-  
ing tested after  
Defendant's  
Death.

Gardiner v. Forbes. *Trin.* 13 *G.* I.  
1727.

AN ACTION for Words laid in *London*, and a Motion made to change the Venue, upon Affidavit of the Words being spoken in the Town of *Southampton*, but denied upon hearing Counsel on both Sides, because the Court doth not use to change the Venue into a City or Town and County within itself, without Consent of the Parties.

*Note*; For the same Reason a Motion to change the Venue from *Middlesex* to the City of *York* was denied. *Vide Earby v. Windus. Prac. Reg.* 429.

In what Time the Defendant must apply to the Court to have the Venue changed, *vide Costar* versus *Standen*, *post*, p. 112, and *Prac. Reg.* p. 423.

[37] And in *Robins* versus *Webber*, *Hil.* 1 *G.* II. a Motion to change the Venue from *Middlesex* to the City of *Exon*. was denied.

But *vide post*, *Biddolph* versus *Brown*, *post*, p. 41, where it has been granted into *London*.

Venue not  
changed into a  
Town and  
County. *Vid.*  
*Lane v. New-*  
*man, post*, p. 82;  
*Herbert v.*  
*Shaw, Trin.* p.  
91; *Ward v.*  
*Colclough*, p.  
119; *Lord*  
*Griffin v. Bugby*,  
*Trin.* p. 132;  
*Box v. Read*,  
p. 133; *Mills*  
*v. Johnson*, p.  
134.

Le Pla v. Warren. *Trin.* 13 G. I. 1727.

*Cooke.*

*Nil debet* no  
Plea to a De-  
claration on a  
Bail Bond.

UPON a Demurrer to *Nil debet* pleaded to a Declaration on a Bail-Bond, the Court were unanimously of Opinion that such Plea was not good.

May v. Annis. *Trin.* 13 Geo. I. 1727.

*Cooke.*

Time of enter-  
ing *Ne recipia-*  
*turs.* *Reg. Cur.*  
*Paſ.* 1 Jac. II.  
*Hil.* 8 Geo. II.  
*reg.* 2. *Vid.*  
*Duell v. Stew,*  
*poſt,* p. 60.

IN this Cause it was resolved, that *Ne Recipiatur* in *London* and *Middlesex* might be entered after eight a Clock in the Evening, the Day next but one before the Day of Sitting.

Gibson v. Quilter. *Mich.* 1 G. II. 1728.

*Foley.*

Warrant of At-  
torney denied to  
be filed after  
Writ of Error,  
and *Certiorari*  
returned that  
no Warrant was  
filed. *Vid. The*  
*Dutch Eaſt India*  
*Company v. Hen-*  
*riques,* *poſt,* p.  
44, and *caſes*  
*there cited.*

UPON a Writ of Error, the Want of a Warrant of Attorney had been assigned for Error, and a *Certiorari* returned, that no Warrant of Attorney was filed, and a Motion was made for Leave to file a Warrant of Attorney for the Plaintiff in the Original Action, and granted upon the Common Rule, to pay Costs if the Plaintiff in Error would not further proceed: A second *Certiorari* was sued out, and a Return thereto, that Warrants were filed: Afterwards upon Motion, a Rule was made to shew Cause why the Rule for filing the Warrant of Attorney should not be set aside; and now upon hearing Counsel on both Sides on shewing Cause, and after great Debate, the Judges gave their

Opinions *seriatim*, and set aside the Rule for filing the Warrant.

*Note*; This was for want of filing the Plaintiff's Warrant of Attorney.

[38] Beach & al' v. Smith, Ar'. Mich. 1 Geo. II. 1728. [*Prac. Reg.* 343. S. C.]

*Cooke.*

IN an Action of Covenant arising in London a *Testatum Capias* issued to the County Palatine of Durham, and a Copy thereof having been served on the Defendant, the Court was moved to stay Proceedings; and Counsel being heard on both Sides, the Court gave their Opinions *seriatim*, that the *Testatum Capias* to the Bishop was not the Process that the Defendant should be served with, pursuant to the Stat. 12 Geo. I. cap. 29, but that the *Capias* which the Bishop issues, is the proper Process wherewith he should have been served, and upon which he would have been arrested, if this Act had not been made, and the Act had not altered the Law in that Particular; and thereupon the Court stayed the Proceedings which had been had on the Service of the *Testatum Capias*.

On a *Testatum Capias ad respondend.* to Durham; the Party must be served with the Bishop's Precept. But see Stat. 5 Geo. II. cap. 27, and the Construction thereof, in *Byer v. Whitaker*, post, p. 119.

Boyd qui tam against The Hundred of Exminster.

A MOTION to set aside the Trial had in this Cause, because the *Venire* was awarded *de Corpore Com. alias quam de hundred de Exminster*, whereas the Action was on a penal Statute, viz. the Statute of *Hue and Cry*, and so not within the \* Act

*Venire* on Stat. Hue and Cry, 13 Ed. I. Stat. 2, c. 1 & 2; 27 Elin. cap. 13. \* Stat. 4 Ann. c. 16.



for the Amendment of the Law. But the Court were of Opinion that the Statute of *Hue and Cry* could not be esteemed a Penal Statute, but an Act made to give the Party a Satisfaction for a Wrong done, and therefore held the *Venire* well awarded.

*Delafountayne v. Myngs. Mich. 1 Geo. II. 1728. [Prac. Reg. 4. S. C.]*

*Cooke.*

Plea in Abatement without Affidavit, or without a Serjeant's Hand, not to be received.

ON a Motion to set aside a Judgment, it appeared that a Plea in Abatement had been pleaded without a Serjeant's Hand, and without an Affidavit to verify it, tho' the Truth of the Plea did not appear to the Court: *Per Cur'* this is no Plea, and the Judgment must stand.

*Note*: By the *Stat. 4 & 5 Ann. c. 16, s. 11*, such Plea is not to be received, unless the Party offering the same doth by Affidavit prove the Truth thereof, or shew some probable Matter to the Court to induce them to believe that the Fact of such dilatory Plea is true.

[39]

*Vid. Hart v. Jewks, post, p. 89, and Tomkin v. Perry, p. 120.*

And *Note*: *Wilson, Executor, versus Palmer, Mich. 12 Geo. I. Prac. Reg. p. 4.* It was likewise held that such Plea, where the Truth thereof does not otherwise appear to the Court, without an Affidavit to verify it, was no Plea.

And *Cartwright versus Skrimshire, Hil. 6. Geo. II. Cooke*, the like Resolution.

N.B. Motion to set aside a plea to the jurisdiction on the ground that the Defendant lived in Wales. The Affidavit of the truth of the plea was entitled between *Lawson v. Jones*, whereas the Declaration was against Jones and three others.

On shewing cause, Mr. Poole argued that the plea was good, as the affidavit of truth was between the proper Plaintiff, although it was only against one of the Defendants, and the reason why the others were omitted was because Bail was put in for the one only, and therefore the Declaration was a nullity as to the others. But the Court held that the plea must be set aside. *Lawson v. Jones, &c. Hil. 17 Geo. 2. B. R.*

Miller v. Miller. Mich. 1 Geo. II. 1728.

Cooke.

**A** MOTION for Restitution after a Writ of Error; the *Fieri facias* was sued out on Friday, the Warrant delivered that Evening to the Officer, a Writ of Error allowed on Saturday Morning, and Notice delivered at the Plaintiff's Attorney's House about a Quarter after Eleven that Morning, Execution executed before the Plaintiff's Attorney could countermand it, viz. about One at Hamersmith. *Per Cur'*: The Allowance of the Writ of Error with the Clerk of the Errors, is a *Superfedeas* without Notice of such Allowance. And tho' it was insisted, that this Execution being taken out before the Allowance of the Writ of Error might be executed, notwithstanding such Allowance, the Execution being awarded by the Court; yet it was declared to be the settled Opinion of the Court, that the Allowance of a Writ of Error is a *Superfedeas*, even where the Execution issues before and is executed after the Allowance thereof, without Notice of it.

The Allowance of a Writ of Error is a *Superfedeas*, if Execution be executed after the Allowance. *Vid.* Jennings v. West, ante, p. 353; and *vid.* 3 Lev. 312, 1 Vent. 29, 2 Keb. 508, pl. 86, 1 Mod. 28. The Allowance is Notice of itself, Salk. 322. Yet to bring the Attorney into Contempt he must have had Notice thereof.

Ilatt & ux' versus Lisset. Mich. 1 Geo. II. 1728. [Prac. Reg. 221. S. C.]

Cooke.

**I**N a *Homine replegiando* for taking the Plaintiff's Wife, a *Capias*, *Alias* & *Pluries* issued; on the *Pluries* the Sheriff of Berks returned *Elongata*; a *Capias* in *Withernam* issued; and a *Habeas Corpus* was moved for to bring up the Body of the De-

Upon a *Homine replegiando* the Proceedings and Recognizance taken. *Vid.* Wise v. Lawrence, post, p. 83.

pendant (who had been arrested on the *Capias* in *Withernam*) into Court; upon the Return, the Defendant was brought into Court, and the Plaintiffs were called upon to declare *instanter*, for want of [40] which they must have been forthwith nonsuited; thereupon the following Declaration was delivered in Court, and a Plea put in thereto, *instanter*, viz.

*Mich. 1 Geo. II.*  
1728.

Berks, ff.

**N**EHEMIAH Lisset, Gent. was attached to answer *William Ilatt* and *Sarah* his Wife of a Plea, wherefore he took the said *Sarah*, and her so taken detaineth, &c. and whereupon the said *W.* and *S.* by *H. M.* their Attorney complain that the said *N.* the 20th Day of *May* in the first Year of the Reign of our now Lord the King, at *Wantage* in the County aforesaid, took the said *S.* and her so taken as yet detaineth, whereby they say that they are injured, and have received Damage to the Value of 5000*l.*

*Mich. primo Geo. II.*  
*Regis. 1728.*

Berks, ff.

**N**EHEMIAS Lisset Gen' Attach' fuit ad respondend' Will'o Ilatt & Sare ux' ejus de placito quare ip'am Saram cepit & captam tenet, &c. unde iidem *W.* & *S.* per *H. M. Attorn' suum* queruntur qd' pred' *N.* 20 die *Maii Anno Regni D'ni Regis nunc primo apud Wantage in Com' pred' ipsam S. cepit & ipsam adhuc captam tenet unde dicunt qd' de'tiorat sunt & dampnum h'ent ad valenc' quinque Mille Librar' & inde produc' se&am, &c.*

and thereupon they bring Suit, &c.

And the aforesaid *Nehemiah* in his proper Person comes and defends the Force and Injury, when, &c. and saith, that he did not take her, the said *Sarah*, in the said Declaration mentioned, in Manner and Form as the said *William Illat* against him above complains: And of this he puts himself upon the Country.

*Et p'd'us Nehemias in pr'ia persona sua ven' & defend' Vim & injur' quando, &c. Et dicit qd' ipse non cepit ipsam pred' Saram in Narr' pred' mentionat' modo & forma prout pred' Will'us Illat & Sara ux' ejus sup'ius versus eum queruntur: Et de hoc ponit se super p'riam.*

Upon the Plea being delivered in Court the Defendant was admitted to Bail, and put in four Bail; the Defendant's own Recognizance was in 500*l.* the other Bail in 250*l.* each, viz. Sir *John Eyles*, Bart. *Benjamin Styles*, Esq.; Sir *Conrade Springell*, Knt. and *Joseph Chitty*, Esq.; the Recognizance was to the Effect following, viz. The Party himself is bound to the Plaintiff in 500*l.* and the Bail are separately bound to the Plaintiff in 250*l.* to be levied of their Goods, Chattels, Lands and Tenements, upon Condition that the said *N. Lisset* do appear *de die in diem* in this Court, and if Judgment be given against the said Defendant, that the said Defendant render his Body in *Withernam*, to remain in Custody, till he render *Sarah* the Wife of the said Plaintiff, and permit her to go at large; upon this, Recognizance being taken, the Sheriff was discharged and the Defendant set at Liberty.

*Registrum Bre.*  
79, 80; *Fitz.*  
*N. B.* 66, 67,  
68; *Rassal's*  
*Ent.* 402.

[41]

Costs for the  
Defendant.

Upon the Trial of this Cause the Plaintiffs were nonsuited, and a Question arose, which now came on to be moved in Court, Whether the Defendant should have Costs; and the Court held clearly that the Defendant should have Costs by the Statute of 4 *Jac. I. cap. 3*, which enacts, That the Defendant shall have Costs in all Cases where the Plaintiff might have Costs; and in a *Homine Replegiando* the Plaintiff should have had Costs, by the Statute of *Gloucester*, 6 *E. I. cap. 1*, if he had prevailed, for Damages are to be recovered therein.

*Upton versus Pullyn. Mich. 1 Geo. II.*  
1728. [*Prac. Reg. 282. S. C.*]

*Foley.*

What Pleas may  
be pleaded with-  
out a Serjeant's  
Hand.

**P**ER Dures pleaded without a Serjeant's Hand, upon which Occasion a Question arose, what Sort of Pleas were to have a Serjeant's Hand; It was held by the Court and settled, that *Comperuit ad diem, Son assault Demefne, Plene Administravit, Riens per discent, Ne unques Executor, Nul tiel Record, Per Minas, Per Dures, Infra Etatem & Sokvit ad diem* need no Serjeant's Hand, but *Non assumpsit infra sex annos* must have a Serjeant's Hand.

*Biddolph & al' versus Browne. Hil.*

*1 Geo. II. 1728.*

Venue changed  
to the City of  
London. *Vid.*  
*Gardiner v.*  
*Forbes, ante, p.*  
*36, and cases*  
*there cited.*

**A** MOTION to change the Venue from the County of *Middlesex* to *London*, on Affidavit that the Cause of Action, if any, arose in *London*; and the Court ordered the Venue to be changed;

for *London* has always been considered in this respect as a County at large, and such Motions have usually been granted, tho' not to any other City or Town which is a County of itself.

[42] *Durham versus Price.*

**I**N *Replevin* after *Non cepit* pleaded, and a *Return* *habend'* awarded, the Defendants procured a Writ of Inquiry of Damages to be executed; but the Court set aside the Writ of Inquiry and the Inquisition taken thereon, because there can be no Inquiry in *Replevin* for the Defendant where there has been no *Avowry*; for on all Pleadings in *Replevin* where there has been no *Avowry* the Defendant has a Nonprofs and Costs; and the *Avowry* which is in the Nature of a Declaration, is the Ground of an Inquiry for the Defendant.

No Inquiry for Defendant in *Replevin* where there is no *Avowry*.

N. B. Where in *replevin*, the Defendant avowed *for rent* due, but the jury on giving verdict for Defendant, omitted to find the value; there it was held a Writ of Inquiry could not be granted, as, by *Stat. 17 Car. 2, c. 7, s. 2*, the *same* Jury who try the issue, shall find the damages.

*Vid. Freeman v. Lady Archer, 2 W. Black, 763.*

But it is otherwise in *replevin* for distress on a *Poor's rate*. *Vide Derwell v. Marshall, 2 W. Black, 921, s. c. 3 Wils. 442. & Valentine v. Fawcett, Ca. temp. Hardw. 138, s. c. 2 Strange 1021*, where Lord *Hardwicke C. T.* said that a Writ of Inquiry may be granted in every case, except under *17 Car. 2, c. 7*.

Cotton, Ar', *versus* Hormonden. *Hil.*  
 1 Geo. II. 1728. [*Prac. Reg.* 357.  
*S. C.*]

*Borret.*

Interest given  
 on a Note upon  
 the Execution  
 of an Inquiry,  
 and confirmed  
 by the Court.  
*Vid. Randolph*  
*v. Rogers, post,*  
*p. 45.*

**A** MOTION to set aside a Writ of Inquiry, because the Jury had found Interest on the Note mentioned in the Plaintiff's Declaration; but the Court were of Opinion, that the Jury had done well to give Interest, and declared that the Plaintiff was intitled to the full Interest from the Time of the Money lent, and discharged the Rule to shew Cause.

Rocks *v.* Ateafe, ex' Dimiss' Dom.  
 Briscoe vid. & al'.

*Cooke.*

Motion to bring  
 Money into  
 Court on an  
 Ejectment  
 brought for  
 Nonpayment of  
 a Fine to the  
 Lord of the  
 Manor, but de-  
 nied. *Vid.*  
*Anon. ante, p.*  
*6, and note there-*  
*to.*

**A** MOTION to bring 100*l.* into Court, the Defendant suggesting that the Ejectment was brought for Nonpayment of a Fine, and for letting a Lease contrary to the Custom of the Manor; and therefore he proposed to bring in the 100*l.* to answer the Fine, and that the Lessor of the Plaintiff should proceed at his Peril for the Forfeiture in respect to the Lease supposed to be let contrary to the Custom of the Manor; but the Court denied the Motion; for tho' it can be no Disadvantage to a Lessor to stay Proceedings on Payment of his Rent and Costs: Yet the granting this Motion may probably give the Defendant such an Advantage over the Lessors, who have brought this Ejectment for a just Cause, as may do them Injustice.

[43] Holdfast *versus* Carlton.

*Foley.*

A MOTION was made the last Day of the Term to plead Antient Demeſne, but denied because it was not moved within the Time limited to plead in Abatement, *viz.* within four Days after Declaration delivered or left in the Office.

Plea of Antient Demeſne denied because too late to plead to the Jurisdiction of the Court. See *Biddleſton v. Acherley*, *poſt*, p. 63; *Smith v. Roe*, *poſt*, p. 103.

Turner *versus* Bayly.

*Cooke.*

A MOTION to ſet aſide a Judgment obtained upon an Affignment of the Bail-bond. The Defendant inſiſted that ſuch Action could not be maintained, because the Bail-bond was taken for more than double the Sum the Plaintiff had ſworn due. The Court ſeemed to be of Opinion, that if the Judgment was regular, the Point about taking more than double the Sum on the Bail-bond could not come in Queſtion; but that this Caſe might be ſettled, the Court put it off till next Term, it being a new Point on the Act of 12 Geo. I. *cap.* 29, but the Parties having agreed, the Point was not then ſettled.

Bail-Bond taken for more than double the Sum ſworn due.

*Note;* It ſeemed to be agreed that the Bail-bond may be taken in double the Sum ſworn due.

May *v.* Conſtable.  *Eaſt.* 1 Geo. II. 1728.

*Cooke.*

UPON juſtifying of Bail, Mr. *Mould* one of the entering Clerks of this Court offered to be Bail; it was objected that he is within the Meaning of the Rule of *Mich.* 1654, *ſect.* 1, which ſays no

No entering Clerk to be Bail. *Reg. Cur' Mich.* 1654, *ſect.* 1, and



## 68      *Cases of Practice in the*

*Mich. 6 Geo. II. 1732. Vid. Taylor v. Fuller, post, p. 64.* Attorney shall be Bail in any Action; the Court said that the old Rule must be taken literally, therefore Mr. *Mould* was allowed to be Bail, but all declared that the Rule should for the future extend to all entering Clerks.

### Wicking & al' v. Cockfedge. [44]

*Borret.*

Bail filed with the Filazer of a wrong County is no Bail.

**A** MOTION to stay Proceedings on the Bail-bond; the Case was, One *Hall* being Defendant in the Original Action was arrested on a *Testatum Capias* into *Suffolk* out of *London*, and by Mistake the Bail was taken and filed with the Filazer of *Suffolk*, but should have been filed with the Filazer of *London*; the Court held the Proceedings on the Bail-bond regular, and would not stay them, but upon Payment of Costs, and the Defendant's giving the Plaintiff Judgment on the Bond to Sheriff, to stand as a Security for the Plaintiff's Debt, and the Original Defendant's accepting a Declaration, and pleading thereto and taking Notice of Trial after Term; but the Defendant not consenting to these Terms no Rule was made.

N.B. *Vid. Fisher v. Levi, 2 W. Black, 1061.*

### The Dutch East India Company *versus* Henriques & al'.

*Borret.*

To amend a Warrant of Attorney by making it Debt instead of case.

**A** MOTION to amend the Warrant of Attorney filed, by making it Debt instead of Case; upon hearing Counsel on both Sides, and citing many Cases the Court ordered it to be amended;

and if the adverse Party does not proceed in Error, Costs to be paid him.

*Vid. Cooke v. Dubeys of Hamilton, ante, p. 10; Gibson v. Quilter, p. 37; Foster v. Blackwell, Barnes, p. 7.*

Watkinson *against* Swyer and others.

*East. 1 Geo. II. 1728. [Prac. Reg. 112. S. C.]*

*Foley.*

[45] **A** MOTION for Judgment upon *Nul tiel Record*, in an Action brought upon a Judgment; the Original Action was (a) Trespafs, and 3s. 4d. Damages given by the Jury, and they also gave 40s. Costs, and 6s. 8d. the *Capiatur* Fine was allowed by the Prothonotary; in all 50s. It was insisted by Mr. Serjeant *Chapple*, that the Judgment was erroneous, because the Jury had allowed more Costs than Damages; but the Court over-ruled his Objection, for the Jury are not bound by the Statute, and the Prothonotary must sign Judgment according to the Verdict; and as to the *Capiatur* Fine, the Prothonotary is directed by the *Stat. 5 & 6 W. & M. c. 12*, to allow it to the Plaintiff in Increase of Costs. He then insisted on a Variance between the Issue delivered and the Record, as to one of the Defendant's Name, *viz. Eustace* in the Issue, and *Curtes* in the Record, which the Court held to be a material Variance; and therefore a Rule was made for Judgment for the Defendant, unless Cause shewn to the contrary on *Monday* next, which was afterwards made absolute on the Secondary's Certificate that no Cause was shewn.

Costs taxed in Trespafs, Damages 3s. 4d. Costs 40s. no Certificate; the 40s. given is the Act of the Jury; the Prothonotary can sign no other Judgment. *Stat. 22 & 23 Car. II. cap. 9, s. 136. Vid. Beck v. Nicholls, ante, p. 24, and cases there cited; and Ven v. Phillips, Salk. 207.*

(a) Where an Action of Trespafs is brought in any inferior Court, there the Plaintiff will have his Costs, for *Stat. 43 Eliz. c. 6. 22 & 23 Car. II. c. 9. 8 & 9 W. III. c. 11*, which

give no more Costs than Damages in Actions of Trespass, do not extend to inferior Courts; and tho' the Defendant remove the Cause, and a Verdict be given above for the Plaintiff, and Damages under 40*s*. yet the Plaintiff shall have his full Costs, because he had made his Election in the inferior Court where he would have had Costs; and the Defendant shall not reap such an Advantage by removing the Cause.

**Williams v. French.** *Trin. 2 Geo. II.*  
1729. [*Prac. Reg.* 398. S. C.]

*Cooke.*

Trial not respited above one Term.  
*mid. Stratford v. Marshall,*  
*post*, p. 119.

**I**N Easter Term a Motion was made to put off a Trial to *Michaelmas* Term, but denied as a Thing never done, for with the same Reason it may be put off for ten Terms, and at that Rate the Plaintiff might be delayed for ever; but on shewing a Precedent in a Cause between *Dighton* and *Ellis*; *Borret*, [*Prac. Reg.* 398] where a Trial was respited from *Michaelmas* to *Easter* Term, and on the Serjeant's urging the Necessity of the Case, the Court granted a Rule to shew Cause this Term, why the Trial should not be respited till *Michaelmas* Term, and now a Rule was granted accordingly to respite the Trial till *Michaelmas* Term, but at the Peril of paying Costs, if the Defendant then desired further Time.

**Randolph versus Reginder.** *Trin. 2 Geo. II.*  
1729. [*Prac. Reg.* 357, S. C.]

*Foley.*

To set aside an Inquiry because the Jury had given more Interest than

**A** MOTION to set aside an Inquiry, because the Jury had given more for Interest than was due, *viz.* the Note was given for payment of Money a Month after Date, and the Jury gave Interest from

the Date, and until the Execution of the Inquiry, whereas Interest ought only to be given from the Expiration of the Month to the Commencement of the [46] Suit. The Court denied the Motion, but ordered the Plaintiff (he consenting thereto) to remit so much as was taken more than ought to have been allowed.

was due. *Vid.*  
*Cotton v. Hor-*  
*monden, ante,*  
p. 42.

*Note* ; In *Pumville versus Willet, Mich. 1733. Borret*, the like Rule was made by the Court.

*Smith versus Dobby.*

*Foley.*

**A**N ACTION of Assault and for taking away 1s. Moved to bring the Shilling into Court, and Plaintiff to proceed at his Peril for the Residue ; and a Rule made to shew Cause ; but *Quære*, Whether it was ever made absolute, or opposed ?

In Assault 1s.  
brought into  
Court. *Tony v.*  
*Clarke, post, p.*  
*59. Spring v.*  
*Bilson, p. 85.*

*Harris versus Allen.*

*Foley.*

**A**N ACTION of Trespass for the mesne Profits, brought pending a Writ of Error on the Ejectment ; it was moved by the Defendant that Proceedings might be staid ; the Court said this Case was within the Reason of the Rule which is constantly granted where an ACTION of Debt is brought on a Judgment, pending a Writ of Error, and therefore made a Rule that the Plaintiff might proceed to ascertain his Damages, and to sign his Judgment, but that Execution thereon should be staid till the Writ of Error on the Judgment was determined.

ACTION for the  
mesne Profits  
pending a Writ  
of Error.

Sedgwick & al' *versus* Richardson.

Cooke.

Accepting of  
Issue waives the  
Form of a Re-  
plication and  
Rule. *Vid. Fox*  
*v. Lewing*, *post*,  
p. 56.

**M**OTION to set aside a Judgment, because the Plaintiff had not delivered a Replication in Form, and given a Rule to rejoin; but it appearing that the Defendant's Attorney had agreed to take the Issue as delivered, the Court held he thereby waived the Form of the Replication and Rule, and therefore they discharged the Rule which had been granted to shew Cause.

Jones *versus* Merriden. *Trin. 2 Geo. II.* [47]  
1729. [*Prac. Reg.* 32. *S. C.*]

Foley.

Plaintiff enter-  
ing the Defend-  
ant's Appear-  
ance the Day  
after the Ap-  
pearance Day, is  
regular. *Stat.*  
*12 G. I. c. 29*;  
*5 G. II. cap. 27.*  
*Stat. 21 Geo. II.*  
*c. 3. Vid.*  
*Charlton v.*  
*Hankey*, *post*,  
p. 95.

**U**PON a Motion to set aside a Judgment, both Plaintiff and Defendant having entered an Appearance for the Defendant, the Court declared that the Plaintiff might enter the Appearance for the Defendant the Day after the Appearance Day of the Return of the Writ; the Defendant did not enter his Appearance till the Day after that Day, and therefore the Plaintiff's Judgment was held regular.

*Note*; In *Easter Term*, 2 *Geo. II.* *Cooke*, the same Point came in Question in a Cause of *Bannister versus Swinburne*, and was determined accordingly.

Higginson *vid. versus* Umfreville.

The Privilege  
of a Clerk in  
the Exchequer  
allowed. *Vid.*  
*Rawlins v.*

**M**R. Baron *Comyns* attended and produced the Red-Book of the Exchequer, and by Virtue of a Clause therein demanded the Privilege of that Court for the Defendant, as being one of the Clerks

of Mr. *Pearce* an Attorney of that Court ; a Rule to shew Cause had been granted, but no Cause being now shewn, Mr. Serjeant *Hawkins* cited many Cases for the Defendant, as did also the two Justices then in Court, viz. *Price* and *Denton* ; the Rule was made absolute and Privilege allowed.

*Parry, ante, p.*  
2. 22 H. 6,  
196, *Brooks Abr.*  
29. 1 *Lutwich*  
46. *Raffal.*  
*Ent. 475, &c.*  
2 *Bul. 36.*  
2 *Salk. 546.*

*Walker & al' versus Packer. Mich. 2*  
*Geo. II. 1728. [Prac. Reg. 405, S. C.]*

*Cooke.*

A MOTION for Costs against a *Pauper* for not proceeding to Trial, and on Debate the Court ordered Costs to be taxed, and declared that a *Pauper* should pay Costs for all Defaults, as an Executor or Administrator should for their own Defaults.

Costs against a  
*Pauper* for not  
proceeding to  
Trial.  
*Vid. Deighton v.*  
*Dalton, ante, p.*  
15.

[48] *Tames v. Gofey. Mich. 2 Geo. II. 1728.*

*Cooke.*

ON a Motion for Liberty to tender Money into Court, upon some of the Promises in the Declaration, and to demur to one of the Promises, a Rule *Nisi* was granted ; but on hearing Counsel on both Sides, the Court declared, that a Tender of Money was in order to make an End of the Cause, and not to delay it, and therefore discharged the Rule to shew Cause.

No Demurrer  
to Part where  
there is a  
Tender of  
Money into  
Court.

Double Plea  
denied.

N.B. *Vid. Hellier v. Hallett, Barnes, 286.*

*Coant versus Keate.**Cooke.*

No Impar-  
lance, tho'  
Plaintiff  
declared on  
several Bat-  
teries, tho'  
but one in  
the Writ.

**A** MOTION for Impar-  
lance in Battery, because  
the Special Writ mentioned but one Battery,  
and several Batteries were set forth in the Declara-  
tion; but denied, because the Special Writ in Bat-  
tery never mentions but one Battery; and so it is in  
Covenant, tho' many Breaches are assigned in the  
Declaration.

Mr. Serjeant *Baynes* for the Defendant; *Whitaker* for the  
Plaintiff.

*Gerry versus Shilston.**Cooke.*

Countermand  
in *London* of a  
*Devonshire*  
Cause held  
good. *Vid.*  
*Goodright v.*  
*Hoblyn*, post, p.  
120.

**I**N an Action laid in the County of *Devon*, a Rule  
was granted for Costs for not going to Trial,  
upon an Affidavit that Notice of Trial had been  
given, but no Countermand served; the Plaintiff  
produced an Affidavit that Notice had been coun-  
termanded in due Time in *London*; and on Debate,  
this was held good, tho' it was urged on the De-  
fendant's Behalf, that the Directions for a Counter-  
mand must come from the Country, and ought most  
properly to be given there; and that the allowing  
Countermands to be served in *London* gave an Op-  
portunity to Plaintiffs to exercise the most notorious  
Vexations; for by the Defendant's Affidavit it  
appeared that the Plaintiff, both before and after  
the Beginning of the Assizes for the County of  
*Devon*, frequently told the Defendant that he in-  
tended to proceed to Trial; and notwithstanding it  
was impossible for the Defendant to receive timely

[49] Notice of the Countermand in *Devonshire*, so as to prevent his Witnesses going to the Assizes, yet the Court were of Opinion that the Countermand given in Town was good, and that any Proceeding to Trial after would have been discharged.

And so it was said to have been settled in a Cause laid in *Yorkshire*, between *Shipley* and *Sweeting*, *Trin.* 13 G. I. *Foley*.

*Barker versus Hartley, vid.'*

*Cooke.*

A MOTION to set aside a Judgment signed for want of a Plea; a Plea had been left in the Office, in the Body of which the Plaintiff's Christian Name was mistaken, by putting *Edrus* for *Edus*, for which Mistake the Judgment was signed; but the Court on hearing Counsel on both Sides, declared that tho' the Christian Name was mistaken, it was a Plea in the Cause, and therefore set aside the Judgment, and said the Plaintiff might think it was well he escaped without paying of Costs.

A Judgment set aside, tho' the Christian Name of the Plaintiff was mistaken in the Plea and the Plea in the Office.

*Note*; This was a Plea of *Plene Administravit*, and it was insisted that if that Part of the Plea, wherein the Plaintiff's Christian Name was mistaken, had been left out, it would notwithstanding have been a good Plea, so that the naming the Plaintiff there was immaterial; but the Plaintiff's Name was again mistaken in a material Part, altho' of that no Notice was taken.

*Parke versus Davis.*

*Foley.*

AN ACTION of Trespas for breaking a Water-pail; a Verdict for the Plaintiff and 1s. Damage; the Question was, Whether the Plaintiff should have his full Costs? the Court held, that this

Costs in an Action of Trespas, Damages 1s. *Stat.* 22 & 23



*Car. II. c. 9.*  
*Vid. Beck v.*  
*Nicholls, ante, p.*  
*24, and cases*  
*there cited.*

being an Injury to the Plaintiff's Personal Property, is not an Action within the Statute ; and there is no Occasion for the Judge to certify, for no Freehold could come in Question ; and it was said this Point had been often so ruled both here and in the *King's Bench* and *Exchequer*.

Note ; *Blackboyne* versus *Packer*, *Trin. 2 Geo. II.* in an Action for killing a Goose, it was ruled accordingly, and full Costs allowed.

### Morris versus Parry.

[50]

*Foley.*

Where the Appearance is entered by the Plaintiff for the Defendant, Notice of the Declaration may be given to the Defendant himself.

By the Rule of Court *Mich. I. C. II.* the Declaration should have been left in the Office, and Notice thereof given to the Defendant. *Vid. Thomas v. Busbell, post, p. 84, Hutsing v. Lillyman, p. 128.*

**A** MOTION to set aside Judgment, upon Affidavit that the Plaintiff, tho' he knew the Defendant's Attorney, had delivered the Declaration, and also a Notice thereof, to the Defendant himself ; but it appeared that the Plaintiff did not know the Defendant's Attorney, till after the Plaintiff had entered an Appearance for the Defendant ; the Court were of Opinion, that the Plaintiff was not obliged to give any further Notice besides what had been given to the Party, and so the Judgment was confirmed ; and tho' it appeared that the Plaintiff did not exactly pursue the (a) Rule of this Court, but delivered a Copy of the Declaration with Notice thereof to the Defendant, yet the Court said that the Delivery of the Declaration to the Defendant, and at the same Time giving him Notice thereof, was a complying with the Rule of Court in an Equitable Construction.

Note ; *Canter* versus *Jockham*, *Prac. Reg. 31*, *Foley*, and *Shrigley* versus *Mather*, *Mich. 1733*, in the like Cases the Court ruled this Point accordingly.

Harding *versus* Avery. Mich. 2 Geo. II.  
1728. [*Prac. Reg.* 186, S. C.]

*Foley.*

A RULE to shew Cause why a *Ca' Sa'* should not be discharged, and the Defendant set at Liberty, the Plaintiff having taken out Execution after a Writ of Error allowed. It appeared that the Plaintiff did not sign his Judgment till after the Return (a) of the Writ of Error; the Court, on hearing Counsel on both Sides, and the Matter fully debated, and many Cases cited, declared that the Plaintiff might sign his Judgment when he pleased; and if he thought fit to defer signing it till after the Return of the Writ of Error, he had Liberty to do so, and might then take out Execution, notwithstanding the Writ of Error, in regard the Writ of Error, if returnable before Judgment signed, does not attach upon the Suit; and therefore the Court discharged the Rule to shew Cause.

Note; *Chivers versus Willan*, Trin. 3 & 4 Geo. II. *Cooke*, in the same Point, the Court determined accordingly.

Judgment signed after Return of Writ of Error held good.

*Vid. Griffin v. King*, post, p. 54, *Duffield v. Warden*, p. 71, *Warwick v. Figg*, p. 77, *Cooke v. Harrock*, p. 88.

3 Keb. 308. (a) The Judgment when signed, hath relation to the Day in Bank; so that a Writ of Error returnable after in the same Term, would have removed the Record.

1 Mod. 112.

[51] Spencer *versus* Le Royd. Mich. 2 Geo. II. 1728. [*Prac. Reg.* 104, S. C.]

*Borret.*

A MOTION made the last Day of the Term for an Attachment for Non-payment of Costs, which the Court granted, but declared it was the settled Practice of the Court, that in no other Case

Rule for an Attachment made the last Day of the Term.

a Motion could be made for an Attachment the last Day of any Term.

N. B. Motion for an Attachment for non-payment of costs, the Affidavit of Service of the Allocatur being that *on or about* the 19th of April the Defendant was served. Motion denied, for the Court held that the Affidavit ought to have shown the *very* day on which service was made.

*Murray v. Dunn, C. B. Pasch, 4 Geo. 3.*

Richardson *versus* Sutton. *Hil. 2 Geo.*  
II. 1728.

*Foley.*

False Plea set  
aside, and a  
Serjeant ordered  
to pay Costs.

*Stat. 3 E. 1. c.*  
29.

**A** MOTION to set aside a Demurrer to a Declaration, where a Plea in Abatement had been pleaded to the Declaration, and that Plea demurred to; yet Mr. Serjeant — had demurred to the Declaration, and to the Demurrer before he pleaded to the Plea in Abatement; the Court resenting this Behaviour in the Serjeant, ordered the Aſt againſt False Pleading to be read, made a Rule to ſet aſide the Demurrer, and ordered the Serjeant to pay the Coſts of the Motion.

The King *versus* Gibbon.

On Attach-  
ment Defendant  
may move to be  
discharged, if  
Interrogatories  
be not filed.

**O**N an Attachment for a Contempt, it was moved to eſtreat the Recognizance, becauſe the Defendant had not appeared to anſwer Interrogatories. For the Defendant it was alledged, that the Interrogatories had not been filed in due Time for his Examination; the Court declared that the Defendant ought to have moved to be diſcharged, if

Interrogatories were not filed in four Days according to the Rule ; but he not having applied for that Purpose, the Court ordered that he should answer the Interrogatories in a Week, or the Recognizance should be estreated.

[52] Griffith *versus* Berney & ux'. *East.* 2 Geo. II. 1729. [1 Barnes, 308. S. C.]

**I**T was moved to discharge the Defendant's Wife after a Render in Discharge of Bail ; Mr. Serjeant *Comyns* for the Defendants cited many Cases ; Mr. Serjeant *Eyre* for the Plaintiff insisted, that the very Recognizance itself imported that if the Defendants should be condemned, the Bail should pay the Condemnation Money, or render the Bodies to the Fleet, so that the Defendants being continued in Custody, was agreeable to the Recognizance and the Defendants own Consent. On the Debate the Court seemed to be of Opinion, that a married Woman might be taken with her Husband on mesne Process, if the Debt was contracted *dum sola*, that the Render in this Case was good, and that the Defendant's Wife could not be discharged ; for if it was otherwise, a Woman in Custody, or that was indebted, might marry a Prisoner, and then if this Practice took Effect, she would be entitled to a Discharge, and her Creditors might be defrauded ; *sed Advisari.*

A married Woman rendered with her Husband in Discharge of Bail.  
*Vid. Blik v. Halpenn, post,*  
p. 117.

*Note ;* This Matter was afterwards compromised, and the Defendant and his Wife were both discharged on bringing Money into Court.

Walter *versus* Okeden.

Cooke.

A Fine amended.

*Vid. Laming v. Bofland, ante, p. 17, and cases there cited.*

A MOTION was made last Term to amend a Fine, by inserting the Word *Woorth*, and this present Term on shewing Cause, the Rule was made absolute for the Amendment, tho' it was objected that the Heirs at Law would be prejudiced, if the Fine was amended; the Court said they could not take Notice whether it would be a Prejudice to the Heirs at Law or not, but it was the Duty of the Court to make the Fine agreeable to the Deed and Intention of the Parties. Mr. Serjeant *Belfield pro Quer'*; *Cheshire & al' pro Hared'*.

Dalton *versus* Teafdale. *East. 2 Geo.* [53]

II. 1729.

Foley.

Motion to set aside a Judgment on a *Sci' fac'* against Bail in *York*, the Original Action being brought there, but the Bail recorded at *Westminster*. *Vid. Cock v. Green, ante, p. 31.*

A *CAPIAS* issued into *York*, a *Testatum Capias* into *Middlesex*, and a *Scire facias* against Bail in *York*, and Judgment thereon, and *Testatum Execution* in *Middlesex*; and now the Court was moved to set aside the Judgment, because the *Scire facias* against Bail ought to be where the Bail or Recognizance is entered on Record; and in this Case the *Scire facias* issued into *York*, whereas it ought to have issued into *Middlesex*, the Bail being recorded at *Westminster*: *Sed Cur' Advise.*

Harvey *versus* Weston.

Foley.

Non-pros set aside, because signed in a wrong Office.

A MOTION to set aside a Non-pros signed in Mr. *Foley's* Office for want of a Declaration; it appeared that the Plaintiff's Attorney practised in

Mr. Prothonotary Cook's Office, and therefore the Rule and Non-pros ought to be in that Office ; and on hearing Counsel on both Sides, the Non-pros was set aside. *Sed quære ; for since the Defendant's Attorney must call on the Plaintiff's Attorney for a Declaration in Writing before he can sign a Non-pros, it seems indifferent in what Office the Rule is given ; and the generally received Opinion is, that it may be given in any Office ; and so likewise the Practice now seems to be.*

Vanderesh & al' *versus* Waylet. Trin.  
2 & 3 Geo. II. 1729. [*Prac. Reg.* 86.  
S.C.]

**A** MOTION to set aside a Render made after the Rising of the Court ; it was declared to be the Opinion of this Court and of the Court of King's Bench, and settled as Law, that no Render was good unless made before the Rising of the Court on the Appearance Day of the *Scire facias* returned *Scire feci*, or of the second *Scire facias* returned *Nihil* ; and so all Arrests made, and Procefs served, after the Rising of the Court on the Return-day, are irregular.

[54] Note ; In *Bacon v. Bruce*, Trin. 7 & 8 Geo. II. *Thomson*, it was likewise held, that a Render after the Rising of the Court upon the last Day allowed for rendering the Defendant was void.

N.B. *Vid. Mason v. Bruce, Barnes*, p. 66.

Render after  
Rising of the  
Court void.  
1 *Rel. Abr.*  
334. *Salk.* 101.  
*Regula Mich.*  
1654. *sec.* 12.  
*Vid. Wright v.*  
*Dixon*, ante, p.  
18. *Wright v.*  
*Dingley*, p. 23.  
*Gwinnett v.*  
*Procter*, post,  
p. 58. *Knight v.*  
*Winter*, p. 123.  
*Ling v. Wood-*  
*yer*, p. 129.

Griffin *versus* King.

Cooke.

Execution set aside, tho' the Judgment was signed after the Writ of Error expired.

*Vid. Harding v. Avery, ante, p. 50. Duffield v. Warden, post, p. 71.*

A MOTION to set aside an Execution which was executed after a Writ of Error allowed; the Case was, The Defendant had confessed a Judgment by *Cognovit Dampna*, and the Plaintiff's Attorney promised to sign it the 31<sup>st</sup> of May, which was the Day before the *Effoin-Day* of this Term; but the Plaintiff's Attorney deferred signing his Judgment till after the Return of the Writ of Error was expired, and then took out his Execution; which the Court said would have been regular, if he had not consented to sign Judgment at the Time above-mentioned; but seeing he had acted this Part contrary to his own Agreement, they ordered the Execution to be set aside, and Restitution made, and likewise ordered the Plaintiff's Attorney to sue out a new Writ of Error at his own Costs.

Rathbone *versus* Stedman. *Trin. 2 Geo.*II. 1729. [*Prac. Reg. 215. S. C.*]

Barret.

Money in Court, and Verdict for Defendant.

*Vid. Anon. ante, p. 5, and cases there cited.*

SIXTY-THREE Shillings being brought into Court upon the Common Rule, and Verdict for the Defendant, upon Motion in the Treasury, and hearing the Attornies on both Sides, it was ordered that the Defendant should have the Money out of Court in Part of his Costs.

Broome v. Woodward and others.

*Mich. 3 Geo. II. 1729.*

*Cooke.*

[55] **A** MOTION to set aside a Judgment signed the next Morning after the Rule to plead was out, the Plea was called for in Writing two Days before the Rule was out; the Court said the Plaintiff's Attorney might call for a Plea instantly upon the Rule being given; but it is the standing Rule of the Court not to sign Judgment or Non-pros, till the opening of the Office in the Afternoon after the Rule to plead is out, and for that Reason they set the Judgment aside.

Judgment set aside because the Plaintiff did not stay till the opening of the Office the Afternoon after the Rule was out.  
*Vid. Buckmaster & Troughton, ante, p. 17.*

Joy versus Francia. *Mich. 3 Geo. II.*

1729. [*Prac. Reg. 146. S. C.*]

*Cooke.*

**A** MOTION to set aside a Judgment, because the Plaintiff's Attorney did not give the Defendant's Attorney Notice of the Declaration, nor call on him for a Plea; but the Court held that the Judgment was good, for where the Plaintiff enters the Declaration *de bene esse*, he cannot know the Defendant's Attorney, till Bail put in or Appearance entered; and Notice to the Defendant of the Declaration and of the Time of pleading is sufficient.

Note; In *Peed versus Chamberlain, Mich. 6 Geo. II. Cooke*, the Court made the like Determination in regard to this Point.

Judgment good where Declaration is filed *de bene esse*; Notice thereof given to the Defendant, without calling on the Defendant's Attorney for a Plea.  
*Vid. Stat. 12 Geo. I. c. 29. Reg. Mich. 3 Geo. II. reg. 2. Turner v. Sbrimpton, ante, p. 32. Higgins v. Stewart, post, p. 62.*



Buſby *verſus* Walker. Mich. 3 Geo. II.

1729.

*Foley.*

Exceptions  
againſt Bail to  
be either on the  
Bail-piece or  
the Book.  
*Vid. Rayner v.*  
*Stamp, ante, p.*  
*33. Walſb v.*  
*Haddock, poſt,*  
*p. 155.*

UPON a Motion to ſtay Proceedings on the Bail-Bond, the Court declared it ſhould be a ſtanding Rule of Practice, that in all Caſes of Exception to Bail, ſuch Exception ſhould be made either in the *Filazer's* Book, or on the Bail-piece with the Commiſſioner, before it is tranſmitted, and afterwards above in the *Filazer's* Book, or on the Bail-piece.

Taylor *v.* Blaxland & al' Repleg'. Mich.  
3 Geo. II. 1729. [*Prac. Reg.* 370.  
*S. C.*]

*Foley.*

Notice of filing  
the *Re. fa. lo.*  
if brought in  
after the four  
Days.

THE Court was of Opinion that Notice ought to be given in Replevin of the filing the *Recordari facias Loquelam* if brought in after the four Days, and that a Declaration ought to be called for in Writing, and therefore ſet aſide the *Return' Habend'*, which had been iſſued in this Cauſe without ſuch Notice.

Note; In *Coleman verſus Poynter*, Eaſter 4 Geo. II. *Foley*, the like Reſolution by the Court.

In *Barrow v. King*, Trin. 18 Geo. III. C. B. it was moved by *Davy, Serjt.* that a *Non pros.* ſigned in the cauſe in replevin ſhould be ſet aſide with Coſts, the Defendant having brought a *Recordari facias loquelam* without giving any notice of the filing of it, or calling for a declaration in writing. On a rule being granted to ſhew cauſe, *Grove* inſiſted that the Defendant was not obliged ſo to do, as the *Rec. fac. loq.* was filed within the four days, of which the Plaintiff is bound to take notice at his peril; and of this opinion was the whole Court.

[56] Brendon v. Hope. *Hil.* 3 *Geo.* II. 1730.  
[*Prac. Reg.* 147. *S. C.*]

*Borret.*

Lond. ff.

IN this Case, the Writ was returnable the second return of this Term, Declaration delivered *de bene esse* upon the *Essoin*-Day of the Return being in full Term, and a Rule to plead given. Upon a Motion in the Treasury for an Imparlane it was denied, because the Declaration was delivered according to the (a) last Rule for pleading in four Days.

No Imparlane on a Declaration delivered on the second Return of *Hilary* Term. (a) *Reg. Mich.* 3 *Geo.* II. and see *Reg. Pasc.* 3 *G. II.*

Fox & al' v. Lewing. *East.* 3 *G.* II.  
1730. [*Prac. Reg.* 227. *S. C.*]

UPON a Motion to stay Judgment after a Replication of *Nul tiel Record*, the Plaintiff insisted that Judgment ought not to be given, for that there had not been a Rejoinder in Form, *quod habetur tale Recordum*; Mr. Serjeant *Hawkins* said it might possibly be the Practice of the *King's Bench*, to give Judgment without such Rejoinder, but insisted that it was not the Method or Practice of this Court: The Chief Justice declared he thought it reasonable to give Judgment upon such a Replication without any Rejoinder, whatever the Practice might be; and the Rule was enlarged till next Term to have this Point settled. And it was then insisted to have been the constant Practice of this Court to add a Rejoinder, and that it was no compleat Issue without it; but the Court were of another Opinion, and declared that the Issue was compleat without any Rejoinder.

Motion to stay Judgment upon *Nul tiel Record* without Rejoinder in Form, denied. *Vid. Sedgwick v. Richardson*, ante, p. 46. *Lutwick* 1514. *Brownl. Ent.* 433. *Dyer*, 228. pl. 45.

Note; In *Newberry* versus *Sedgwick*, *Easter* 1736, in the like Case the Court determined agreeably to the above Resolution.

Cole v. Pinnell. *Trin.* 3 G. II. 1730. [57]

*Foley.*

*Li. lo.* because  
no Plea called  
for in three  
Terms.  
*Reg. Mich.*  
1654. sec. 15.

**A** Motion for an Imparlance till *Michaelmas* Term next, because the Declaration was delivered last *Michaelmas* Term, and no Plea called for in three Terms, according to the Rule *Mich.* 1654, which was ordered by the Court accordingly.

Thompson v. Smith, ex dimiss. Samuel Warner, *Esq*;

*Cooke.*

Proceedings  
stayed till the  
Lord of the  
Manor deli-  
vered the De-  
fendant Admis-  
sion.

**I**N *Ejectment*, a Rule to shew Cause why Proceedings should not stay till the Lessor, being Lord of the Manor, should deliver the Defendant a Copy of the Court-Roll of his Admission to the Copyhold Lands of Inheritance in Question, which was detained for Non-payment of the Fine. The Court were of Opinion, that the Defendant had a Right to the Admission, and might not be able to defend himself without it, and therefore the Lessor ought to deliver it, he having another Remedy for his Fine, for the Lands will be forfeited for Nonpayment thereof.

Time to plead  
denied, unless  
Consent not  
to move to  
change the  
Venue.  
See the next  
Case and the  
Cases there cited.

Sabor *versus* Pott.

*Borret.*

**O**N a Motion for Time to plead, the Court refused to grant Time, but on Terms that the Defendant should consent not to move the Court to change the Venue.

Treasure v. Wright. Mich. 4 G. II.  
1730.

Cooke.

[58] ON a Motion for Time to plead, it being represented on the Behalf of the Plaintiff, that the Defendant intended to move to change the Venue, which would be a great Delay to the Plaintiff; the Court said they would not encourage Motions to change the Venue after Time to plead had been given, and therefore would not give Time to plead, unless the Defendant would consent not to move to change the Venue.

See the preceding Case, and Carter & Dormer, ante, p. 33. *Coffar v. Standen*, post, p. 112. *Ball v. Young*, p. 126. But see also *Lucas v. Rudd*, post, p. 136.

Griffith, Administrator of Griffith, *versus* Squire. Mich. 4 Geo. II. 1730.

Cooke.

A MOTION was made to tax the Intestate's Bill of Costs, the Action being brought for Fees and charges due to the Intestate, who was an Attorney; but the Motion was denied, and it was likewise held that the Administrator of an Attorney might commence a Suit without delivering any Bill.

Motion to tax deceased Attorney's Bill denied. *Vid. Clarke v. Godfrey*, ante, p. 27. *Marsh v. Carter*, post, p. 109. *Comb.* 348.

And Note; In *Lee, Executor*, against *Knight*, Mich. 6 Geo. II. *Cooke, Barnes*, 119, the like Motion was made and denied.

Where an Attorney had delivered his Bill and an application was made to tax it after his death; although a sixth part was taken off, yet his Executrix was held not to be liable to pay the costs of taxation, under the *Stat. 2 Geo. II. c. 23. s. 23. Vid. Weston v. Pool, 2 Strange*, 1056.

Holmes *versus* Small, and in three other  
 Causes. *Mich.* 4 *Geo.* II. 1730.  
 [*Prac. Reg.* 137. *S. C.*]

*Cooke.*

Concerning  
 Declaring by  
 the By.  
*Vid. Metbain*  
*v. Pople, ante,*  
*p. 6.*

**A** MOTION to set aside the Proceedings, be-  
 cause it was alledged the Declarations were  
 delivered as Declarations by the By, and for that  
 they ought not to declare by the By, till the Plaintiff  
 had declared in the Original Action. *Cur* : If the  
 Writ had been Special it must have been so; but  
 here the Writ is an *Acetiam* only, and so the Plain-  
 tiffs by declaring will only lose the Bail, but may  
 declare in any Action or any County, as they might  
 upon a *Clausum fregit*, and deliver as many Declara-  
 tions the same Term between the same Parties as  
 they will.

Gwinnell *versus* Procter. *Mich.* 4 *Geo.*  
 II. 1730. [*Prac. Reg.* 73. *S. C.*]

*Foley.*

Render not  
 good till Bail  
 be perfected.  
*Vid. Vanderoff*  
*v. Waylet, ante,*  
*p. 53.*  
*Ling v. Woodger,*  
*post, p. 129.*

**A** MOTION to discharge Mr. Justice *Price's*  
 Summons to stay Proceedings on a Bail-  
 Bond, on a Suggestion that the Defendant had sur-  
 rendered himself in Discharge of his Bail; it  
 appeared that Exception was taken to the Bail, and  
 that the Render was made before Justification, so  
 that the same was irregular, and did not warrant the  
 Suggestion in the Summons; wherefore the Court  
 set the same aside.

Note; The same point was resolved by the Court in  
*Cremor v. Bulman, Barnes*, 67. [59]

Tuney *versus* Clarke. Mich. 4 Geo.  
II. 1730.

*Cooke.*

**I**N *Trover*, the Defendant moved to bring a Note into Court; Mr. Serjeant *Darnell* declared he had moved for and obtained a Rule, to bring into Court two Fowls in one Term, and the next Term a Spare-rib of Pork or Money in Lieu thereof; Mr. Secondary *Thomson* remembered a Motion to bring in a Belt in *Trover*, and several other Instances were given: The Court thought it as reasonable that Goods, or their Value, should be brought into Court in an Action of *Trover*, as Money in an *Assumpsit*, and made a Rule accordingly.

Tender of a Note into Court upon an Action of *Trover*.  
*Vid. Smith v. Dobby, ante, p. 46.*  
*Spring v. Bilson, post, p. 85.*

Note; *Billings* against *Wilcocks*, *Hil. 1733. Cooke*, a Rule was granted for bringing Work-Tools into Court.

Poulter *versus* Skynner. Mich. 4 Geo. II.  
1730. [*Prac. Reg. 129. S. C.*]

*Foley.*

**U**PON a Motion to set aside a Judgment, it appeared that the Defendant was served with Process in *London*, at which Time he lodged in *London*; and Notice of a Declaration being filed against him was likewise left at his Lodging in *London*, as his last Place of Abode, with Directions therein to plead within four Days, tho' his most usual Place of Abode was at *Dorchester* where he had a House, which, being twenty Miles from *London*, it was insisted upon that he should have had eight Days Time to

Judgment good, tho' the Defendant's most usual Abode was above 20 Miles from *London*, Process being served and Notice of the Declaration given at his Lodgings in *London*.

(a) *Mich.*  
1 *Geo. II.*  
*Mich.* 3 *G. II.*  
*reg.* 2, &  
*East.* 3 *Geo. II.*  
*Vid. Whitehead*  
*v. Goodyer,*  
*post,* p. 72.

plead by the (a) Rules of the Court; and also that the Notice should have been left at the Defendant's House in the Country, he only being in *London* for a short Time upon Business; but the Court held that the Process having been served upon the Defendant in *London*, and the Notice of the Declaration delivered in *London*, while he resided there, such Delivery was sufficient, and that the Defendant had only four Days Time to plead.

Where a cause is commenced as a Town Cause, and is not objected to by the Defendant, who accepts declaration with notice to plead in four days, it must be considered as a Town Cause through all its subsequent stages. *Vid. Kadday v. Jordan,* 2 *W. Black,* 992. In this case, *Poulter v. Skynner*, was referred to.

Duell qui tam *versus* Stow. *Mich.* 4 [60]  
*Geo. II.* 1730. [*Prac. Reg.* 406,  
*S. C.*]

Costs tho' *Ne*  
*recipiatur* entered.  
*Reg. Cur' Pas.*  
1 *Jac. II.*  
*Hil.* 8 *Geo. II.*  
*Reg.* 2.  
*Vid. May v.*  
*Annis, ante,*  
p. 37.

*Cooke.*

UPON a Question whether Costs should be allowed to the Defendant, on account of the Plaintiff's not proceeding to Trial in *Middlesex*; it appeared the Defendant had entered a *Ne recipiatur* the Evening next but one before the Day of Sitting; and it was therefore insisted that the Plaintiff was not to pay any Costs, since the Defendant himself by entering the *Ne recipiatur* was the Occasion why the Cause was not tried; but *per Cur'* the Default was in the Plaintiff's not entering his Cause in due Time, and therefore he shall pay Costs notwithstanding the *Ne recipiatur* entered by the Defendant.

Garden *versus* Sheers, an Attorney.

Cooke.

**A** MOTION to discharge the Defendant upon an Affidavit, that he (as an Attorney) was going to *Westminster* to attend justifying Bail, and had given Notice to the Plaintiff's Attorney and Filazer to attend; but this did not appear plainly; and therefore, tho' the Court will protect any Person *Endo & Redeundo*, yet they will not regard every Pretence.

The Defendant, an Attorney, moved to be discharged out of Execution, being taken as he was going to attend the Court, but denied.

*Vid. Griffith v.*

*Brown, post,*

p. 64.

*Piggot v. Charl-*

*wood, p. 102.*

*Morley v. Grub,*

p. 104.

*Newman &*

*Harrison, p.*

140.

Ellison *versus* Kirby.

Foley.

**A** MOTION and Rule made to tax the Plaintiff's Bill of Costs, which was taxed *Ex parte* after several Attendances; but at last it appearing to the Court that the Plaintiff had not signed his Bill, the Court declared that a Bill not signed was not to be taxed by Virtue of the late Act of 2 Geo. II. cap. 23, for the Regulation of Attornies and Solicitors, and discharged the Rule and the Proceedings which had been had thereon.

Bill not signed not liable to be sued for, or taxed.

*Vid. Clarke v.*

*Godfrey, ante,*

p. 27.

[61]

Hayes *versus* Longbotham.

**A** MOTION that the Plaintiff should reverse an Outlawry at his own Expence, for that the Defendant being visible, and daily to be arrested or served with Process, (of which Affidavits were made), and living in *London* was outlawed there; the Motion was after great Debate denied: But the Court said,

Outlawry in the same County held good.

*Vid. Norton v.*

*Gilbert, post,*

p. 78.



if the Defendant had been outlawed in another County they would have ordered the Plaintiff to reverse the Outlawry and pay Costs: *Sed Quære*; for the Writ of Proclamation, which by the *Stat. 31 EL. c. 3, s. 1*, must be awarded to the Sheriff of the County where the Defendant dwelt at the Time of the Exigent, was intended to remedy any Surprize of this Sort upon the Defendant. Mr. Serjeant *Corbet* cited several Cases in the *King's Bench*, where Persons being outlawed, tho' in the same County, yet it appearing that they were visible, and easy to be arrested or served with Process, the Plaintiffs were ordered to pay Costs and reverse the Outlawry at their own Expende.

### Hamly *versus* Dowharty.

*Borret.*

*No exception to  
Bail which a  
Sheriff has taken.*

IT was declared by the Court to have been the constant Practice, that no Exception could be taken to the Bail which had been taken by the Sheriff, but the Plaintiff may proceed against the Sheriff to make him return his Writ and bring in the Body, and the Court will then compel the Sheriff to put in good Bail, as they did Mr. *Benson* in the Case of *Hampson versus Sower*, *East. 2 Geo. II. Foley*.

*Practice altered.*

*Note*; The Practice is now altered by a general Rule made *Mich. 6 Geo. II. Reg. 2*, and Exception may now be taken against such Bail. *Vid. Claxton v. Hyde, Barnes, 90.*

Atkins, Administrator of Bassett, v. Spence.

*Intr. Trin. 3 & 4 Geo. II. 1730. Rot.*  
1421. [*Prac. Reg. 115, S. C.*]

*Foley.*

[62] **T**ROVER brought by an Administrator where the Trover was in the Intestate's Time, and the Conversion in the Administrator's; and the Plaintiff being nonsuited at the Assizes, the Question was, Whether the Plaintiff should pay Costs on a Nonsuit? *Cur'* inclined to think that if the Action might have been brought by the Administrator in his own Right, he should pay Costs, but not otherwise: *Sed advisari*; and the *Postea* was ordered to stay. Afterwards in the same Term the Court ordered the Plaintiff should pay Costs, for that the Action might have been brought in his own Right.

Costs on a Nonsuit against an Administrator.  
*Vid. Lamley v. Nichols, ante, p. 14, and cases there cited.*  
*Worfield v. Worfield, Latch. 220.*

Ascough & al' v. Lady Chaplin. *Trin.*

4 Geo. II. 1730. [*2 Peere Wms. 591.*  
2 *Eq. ca. Ab. 780. Moseley, 391, S. C.*]

*Borret.*

**A** WRIT *de Ventre inspiciendo* returnable *Tres Mich.* on the Behalf of Edward Ascough, Esq.; and Elizabeth his Wife, Anne Chaplin, Spinster, Charles Fitzwilliams and Frances his Wife, Coheirs of Sir John Chaplin, Bart. their Brother, against Dame Elizabeth Chaplin, Widow of the said Sir John; the Writ was returned that the Lady was with Child, and a Motion made for the safe Custody of her until her Delivery; it was suggested that the

*Breve de Ventre inspiciendo.*  
*Vid. Officina Brev. 409.*  
*Eaft. 39 El. rot. 1250.*  
*Moore, 523.*  
*BraEt. lib. 2, fo. 69.*  
*Cro. Jac. 685, ca. 2.*

Lady's Mother was likewise with Child, and therefore neither she nor any other Woman with Child were proper Persons to be with her; the Court agreed that such a Clause should be inserted in the Writ, and Ladies were named on the Part of the Prosecutors or Heiresses, to attend the Lady during her Pregnancy and till her Delivery, but they must not name any Spinster; and the Mother was allowed to visit only.

Higgins v. Stuart. *Hil. 4 Geo. II. 1731.*  
[*Prac. Reg. 275, 396, 442, S. C.*]

Notice of  
Trial or Inquiry,  
where the At-  
torney is not  
known.  
*Vid. Joy v.*  
*Francia, ante,*  
p. 55.

*Foley.*

IT was held by the Court, that Notice of Trial or Inquiry must be delivered to the Defendant, where the Attorney is not known or not to be met with.

The Principal, Fellows and Scholars of [63]  
*Jesus College in Oxford, v. Vaughan.*  
*East. 4 Geo. II. 1731.*

*Cooke.*

Motion for a  
new Trial  
where the  
Plaintiffs were  
non-suited.  
*Vid. Williams*  
*v. Jones, post,*  
p. 101.  
*Jones v. Her-*  
*gest, p. 110.*  
*Stevale v. Leaver,*  
p. 124.

IN *Quare Impedit*, the Plaintiffs were non-suited at the Assizes for *Surry*, and now on their moving for a new Trial, the Defendant opposed the Motion, insisting that the Plaintiffs being out of Court by the Non-suit, the Court could not admit the Plaintiffs to move; but it was answered that the Question here was, If the Non-suit was regularly obtained, and whether or no the Plaintiffs opened the Cause, and if that Objection should prevail, it would be *exceptio*

*ejusdem rei cuius petitur dissolutio*; the Court ordered Proceedings to be staid till Mr. Justice Probyn's Opinion should be asked; afterwards on his Certificate the Rule was discharged.

Parsons & al' *versus* Smith. *East.* 4 Geo. II. 1731. [*Prac. Reg.* 131. S. C.]

*Borret.*

**A** MOTION to stay Proceedings, because the Notice of the Declaration was not sufficient, it not appearing in what kind of Action the Declaration was, whether Debt or Case; the Court debated this Matter, and were of Opinion that if the Notice imported the Nature of the Action, it was not necessary to set forth the Substance of the Declaration at large therein; but the (a) Notice in this Case was only for 10*l.* in which you are indebted for Work done, and on a *Quantum meruit*; and therefore it not appearing what the Nature of the Action was, since it might be an Action of Debt or Case, the Court ordered the Proceedings should stay.

Proceedings stayed, the Notice not being sufficient of the Declaration left in the Office.

(a) See the Form of the Notice, *Prac. Reg. Com. Pleas*, 131.

*Vid. Sellar & Facey, post*, p. 68. *Taylor & Sherman*, p. 122.

*Note*; There was the like Resolution in a Cause, *Prior v. How*, this Term; and in another Cause, *Higmore v. Tiffin*, *Hil. Geo. II.*

Biddleston *versus* Atcherley. *East.* 4 Geo. II. 1731. [*Prac. Reg.* 286. S. C.]

*Cooke.*

**I**N this Cause a Motion was made to set aside the Judgment, which had been signed after a Plea in Abatement was delivered; it appeared that the De-

To plead in Abatement within four

Days after  
Declaration  
delivered or left  
in the Office.  
*Vid. Holdfast v.  
Carlton, ante,  
p. 43.*

claration was delivered the Eighth of *February*, and the Plea in Abatement not delivered till the Fourteenth of *February*; and it was insisted on the Part of the Plaintiffs, that this Plea in Abatement was pleaded after the Time limited by the Rules of the Court, and was therefore irregular, for that it ought to have been pleaded within four Days after the Declaration delivered or left in the Office, and could not afterwards be pleaded; of which Opinion was the Court; and therefore the Motion was denied, and the Resolution in the Anonymous Case, *ante, p. 23*, was established, where it is held that such Plea is void if not delivered within four Days after Declaration delivered, or Notice of Declaration served, even tho' no Rule to plead were given. [64]

Griffith *versus* Brown. *East. 4 Geo. II. 1731.*

An Attorney in  
Execution dis-  
charged, being  
attending on  
Motion.  
*Vid. Garden v.  
Sheers, ante, p.  
60, and cases  
there cited.*

*Borret.*

A MOTION on the Petition of Mr. *Harrijo*n an Attorney, to be discharged, he being taken in Execution at the Suit of Mr. *Hoyle*; it appeared he was taken at the *Exchequer* Coffee-house near *Westminster-Hall*, while he was attending on a Motion in this Court; and for that Reason the Court discharged him.

Taylor *versus* Fuller. *Trin. 5 Geo. II. 1731. [Prac. Reg. 34. S. C.]*

Where a Bill  
need not be filed  
against an  
Attorney.  
*Vid. May v.  
Constable, ante,  
p. 43.*

A N Attorney sued either as Executor or Administrator, or as Bail, has no Privilege, but may be sued as a common Person. And in the same Term one *Vaughan*, an Attorney of this Court

and of the *King's Bench*, offered to be Bail but was refused, there being a Rule against it made in *Michaelmas Term 1654*. An Attorney of another Court may be Bail, but then he loses his Privilege, and so an Attorney of this Court, where the Plaintiff consents, may also become Bail, but thereby he loses his Privilege.

[65] *Martin v. Sharopin. Trin. 5 G. II.*  
1731.

*Borret.*

THE Defendant was arrested and held to Special Bail, and moved to be discharged, having a Certificate from the Count de *Broglie*, the *French* Ambassador, of his being Master of the Horse; it appeared the Defendant was a Trader, and such a one as a Commission of Bankruptcy might have issued against; the Court discharged the Rule to shew Cause.

An Ambassador's Certificate produced, but rejected.  
*Vid. De Ceriffay v. O'Brien, post, p. 134.*  
*Stat. 7 Ann. c. 12.*

*Geale v. Chapman. Intratur Hil. 3*  
*Geo. II. Rot. 1471. [Prac. Reg. 265.*  
*S. C.]*

*Foley.*

UPON the late Aſt for setting one Debt against another, a Motion that no Costs should be allowed for that there was no Verdict for the Defendant, only an Indorsement that 13*l.* was due to the Plaintiff for Rent, but that on Ballancing the Accounts, there appeared due to the Defendant 13*s.* the Court declared that the Indorsement on the Re-

On a Verdict in Favour of Defendant on the Aſt for setting one Debt against another, he shall have Costs.

*Vid. Stat. 2 G.  
II. c. 22. § 8  
Gen. II. c. 24.*

cord was according to the Intent of the Aſſ, and was a good Verdict to intitle the Defendant to have his Coſts as in other Caſes, and alſo his Coſts for maintaining and ſupporting his Verdict.

*Holiday v. Scot. Mich. 5 Geo. II. 1731.*

*Borret.*

A Plea to be called for in Writing, where an Attorney undertakes to appear for Defendant.

**A**N Attorney undertook to enter an Appearance for the Defendant and plead; the Court ſaid they would compel him to enter the Appearance, but doubted whether the Plaintiff could ſign Judgment without demanding a Plea in Writing; it was afterwards agreed that a Plea ought to be demanded in Writing.

*Baker verſus Miles.*

[66]

*Borret.*

Verdict ſet aſide, and new Trial ordered, on Affidavit of the Jurymen.

**A** MOTION to ſet aſide a Verdict, and for a new Trial, upon an Affidavit of eleven of the Jury; wherein it was ſworn that they had agreed on a Verdict for the Plaintiff and 5s. Damages, but by Miſtake the Foreman gave a Verdict for the Defendant: *Per Cur'*, a new Trial upon Payment of Coſts.

*Edwards, ex dimiſſ' Edwards, v. The Earl of Warwick.*

*Cooke.*

Motion for a Trial at Bar the ſame Term that the Motion was made.

**I**N Ejectment, a Motion for a Trial at Bar the ſame Term, it being ſuggeſted that the Defendant would be intitled to Privilege the next Term; it was objected that it is not uſual to be granted the ſame

Term in which the Motion is made ; but the Court doubted, and ordered Precedents to be searched for ; the Earl afterwards appeared in Court, and agreed by Writing under his Hand to waive his Privilege, and thereupon a Rule was granted for a Trial at Bar the next Term.

Buxom, ex dimiss. Pellow, *versus* Pellow.  
*Mich.* 5 *Geo.* II. 1731. [*Prac. Reg.*  
 269. 391. *S. C.*]

*Cooke.*

**I**N this Cause the Question was, what Notice of Trial must be given on an Issue of above a Year's standing? It was settled that a Term's Notice must be given, and the Notice must be delivered before the *Essoin*-Day, otherwise not good.

A Term's Notice where Issue has been joined above a Year.  
*Vid. Bower v. Street, ante, p. 2.*  
*Paul v. Gledhill, post, p. 97.*  
*Reg. Cur' Mich.* 1654, sec. 21.  
*East. 13 Geo.* II. reg. 2.

Whitchurch *v.* Worthington, an  
 Attorney.

*Foley.*

[67] **T**HE Court held that, upon a Bill filed against an Attorney, the Subscribing the Bill was only an Undertaking to appear, and the Defendant ought likewise to enter his Appearance in the Prothonotary's Remembrance, which, upon Application, the Court will oblige him to do.

Subscribing Bill to appear not good without entering Appearance in the Remembrance.



*Herne versus Chapman. Mich. 5 Geo. II. 1731. [Prac. Reg. 287. S. C.]*

*Borret.*

Time till such a Day given by a Judge to plead, includes that whole Day, and till the opening of the Office the Afternoon of the subsequent Day. *Vid. Buckmaster v. Troughton, ante, p. 17, and case there cited.*

**A** MOTION to set aside a Judgment signed the Morning next after the Day given by a Judge's Order for Time to plead; the Court were of Opinion, that the Day given by the Judge must be intended a whole Day, and that this was enlarging the Rule to plead one whole Day, and therefore the Plaintiff could not sign his Judgment till the opening of the Office in the afternoon of the next Day after the Day given by the Judge was expired.

Note; In *Taylor versus Shcomb, Barnes, 243*, Time to plead was given till the first Day of next Term, by a Judge's Order; and the Court were of the same Opinion as above; and that no new Rule to plead was in that Case necessary to be given.

*Dale versus Careless & al'.*

*Borret.*

Notice to be given of Motion to enlarge a Rule after the Day to shew Cause.

**A** MOTION to enlarge a Rule, but the Party not coming on the Day upon which the Rule was made to shew Cause, and having given no Notice of the Motion, the Court refused to enlarge the Rule till Notice of the Motion had been given; declaring that Notice ought always in such Case to be given.

*Robinson versus Simmonds. Mich. 5 Geo. II. 1731. [Prac. Reg. 302. S. C.]*

*Cooke.*

Plea withdrawn the same Term without Leave.

**U**PON a Motion for Leave to withdraw a Special Plea, and to plead the General Issue; the Court declared it might be done the same Term with-

out Leave of the Court, on Payment of Costs, unless the Plaintiff have replied, and then it must be with Leave, and the Defendant must pay Cost.

[68] *Molden v. Wrangham, ex dimiss. Camden. Hil. 5 Geo. II. 1732. [Prac. Reg. 168. S. C.]*

*Foley.*

UPON a Motion on the A<sup>d</sup> 4 Geo. II. c. 28, for Judgment in Ejectment; the Court said it was not sufficient for the Lessor of the Plaintiff to say generally in his Affidavit, that he has a Right to re-enter, but he must shew how he has such Right; but there is no Occasion to produce the Lease in Court upon the Motion, an Affidavit of the Facts being sufficient; (a) a proper Affidavit of the Facts required by the A<sup>d</sup> to be proved being now produced, the Court made the usual Rule for Judgment.

Motion for  
Judgment in  
Ejectment on  
the A<sup>d</sup> 4.  
G. II. c. 28.

(a) The Affidavit required in this Case is in Substance as follows, that the Declaration was fixed upon such a Place, being the most notorious Part of the Premises in Question (there being no Person in Possession on whom the Declaration could be legally served); that half a Year's Rent was then due from the late Tenant; that no sufficient Distress was to be found upon the Premises to answer the Arrears then due; that the late Tenant held such Premises by Virtue of a Lease from the Lessor of the Plaintiff, and that therein is contained a Clause of Re-entry for Non-payment of that Rent.

Seller *versus* Faceby.*Borret.*

A Declaration may be delivered *de bene esse*, on the Return Day or after, and the Notice must specify the Nature of Action.

*Vid. Anderson v. Moreton, ante, p. 16. Parsons v. Smith, p. 63, and cases cited. Reg. Cur' Mich. 1 Geo. 2. and Mich. 3. Geo. 2.*

**O**N a Motion to stay Proceedings, it was insisted that the Declaration being delivered the 22nd of October could not be regular, it being before the first Day of the Term; but the Court held it was regular, because a Declaration may be delivered on the *Essoin* or Return day, or any Day after, *de bene esse*, tho' a Rule can't be given till the first Day of the Term; another Objection was, that the Notice of the Declaration was not good, not setting forth the Nature of the Action, whether Debt or Case; the Notice was, *That a Declaration upon a Note under Hand, and for Goods sold, was filed in the Office*; whereas it was insisted that an Action of Debt might be brought for the same, and therefore that the Nature of the Action was not sufficiently specified; of which Opinion was the Court, and held the Proceedings irregular.

## Southmead &amp; al' v. Northmore.

[69]

Motion that Costs might be taxed as between Attorney and Client denied.

*Vid. Durrant, v. Kerr, post, p. 70.*

**A** MOTION to review Costs, upon which a Question arose, Whether as this Case stood, being by an Agreement in Writing to pay Debt and Costs, the Costs should be taxed as between Attorney and Client? To which at first the Court were inclined, but afterwards altered their Opinion, and discharged the Rule.

*Kiping versus Janfon.*

*Cooke.*

**A** MOTION to fet aside a Judgment on a Warrant of Attorney, dated the 19<sup>th</sup> of October 1730, empowering the Confession of a Judgment as of the next *Hillary* Term or any subsequent Term, and the Judgment not signed till the 7<sup>th</sup> of December 1731, and then without a Rule of Court for that Purpose; it was insisted that the Judgment should have been entered within the Year from the Date of the Warrant, and that the Plaintiff has not four Terms inclusive of the Term mentioned in the Warrant (which in many Cases will give him a longer Time) to enter it; to which Opinion the Court inclined, and therefore made a Rule to shew Cause.

Judgment signed without a Rule, where the Warrant is above a Year's standing, not good.

Afterwards the Court recommended it to the Parties, to refer it to the Prothonotary to examine how much was due to the Plaintiff, and upon Payment of so much as was really due, that the Judgment should be set aside; and a Rule was made by Consent for that Purpose.

*Smith versus Jenks. Hil. 5 Geo. II.*

1732. [*Prac. Reg.* 127. *S. C.*]

*Cooke.*

**A** MOTION to set aside a Judgment and a Writ of Inquiry; the Case was, The Defendant was served with Process, returnable the second Return of *Michaelmas* Term; the Declaration had been left in the Office before the *Effoin*-Day of this Term, and Notice thereof delivered the 26<sup>th</sup> of

Motion to set aside Judgment and Inquiry denied being too late.  
*Vid. Morse v. Farnham, post, p. 92, Grimes v. Clever, p. 145.*

*January*, which was dated the 24<sup>th</sup> of that month, Judgment signed this Term, and Notice of executing the Inquiry given, and the Defendant never applied till the Day before the Inquiry was to be executed ; wherefore the Court denied the Motion, and said [70] the Defendant should have come sooner.

Note ; In *Chapple* versus *Thomas*, and *Wrath* versus *Rose*, the same Term, the like Motions were denied for the same Reason.

Durrant, vid', v. Kerr & al'; Eadem  
v. Lover & al'.

*Cooke.*

On Award to pay Costs, only common Costs to be taxed.

*Vid. Southmead v. Northmore, ante, p. 69.*

**A**N Award to pay Costs ; Mr. Justice *Price* ordered that Costs should be taxed as between Attorney and Client, and they were taxed accordingly ; but on the Motion to discharge a Rule which had been granted last Term for an Attachment, for not paying the Cost so taxed, the Court held the said Taxation irregular, and that the Defendant should not in any Case be charged but with Costs as between Party and Party, without a Special Order or Agreement for that Purpose ; and they discharged the said Rule for an Attachment, and ordered that Costs should only be taxed as between Plaintiff and Defendant.

N.B. The same point was determined in *Barker v. Tibson*.  
2 *W. Black.* 953.

Davis *v.* Edwards, Bart. ex dimiss.  
Major', &c. Salop.

*Cooke.*

**A** MOTION to inspect Court-Rolls, and produce them at the Assizes; the Court denied the Motion, and said where there is a Dispute between two Lords of Manors, the Court will not oblige either to expose his Title, Books, or Rolls.

Inspection of Court Rolls denied.  
*Vid. Anon. ante p. 6, and cases there cited.*

Thompson *versus* Merredeth.

*Foley.*

**A** MOTION by Defendant for Costs, according to the *Stat. 3 Jac. I. c. 15*, the Defendant being an Inhabitant in *London*, and the Action under 40s. but in this Case a Judgment had been signed and set aside, upon Terms of going to Trial, by which the Defendant had agreed to try it in this Court, and waived the Benefit of Costs by Virtue of the *Stat. 3 Jac. I. c. 15*, and therefore the Motion was denied.

Costs refused, the Defendant an Inhabitant in *London*, and the Action under 40s.

[71] Reed *v.* Brown. *East. 5 G. II. 1732.*  
[*Prac. Reg. 280. S. C.*]

**A** MOTION to set aside a Judgment which had been signed for want of a Rejoinder, because the Defendant's Attorney was not called upon for a Rejoinder; it appeared that a Demand was made upon a former Agent for the Defendant's Attorney, but none had been made on the Agent then concerned in the Cause; the Court held, that calling upon a former Agent was not sufficient, for there

Judgment set aside because Defendant's former Agent only was called upon for a Rejoinder in Writing.

must be a Demand made upon the Agent concerned in the Cause.

### Duffield *versus* Warden.

*Cooke.*

Plaintiff to sue out a new Writ of Error at his own Costs, and pay Costs of Motion, he not signing his Judgment in Time.

**A** MOTION to oblige the Plaintiff to sue out a new Writ of Error at his own Expence, the Plaintiff having delayed signing his Judgment till the Return of the Writ of Error was expired, tho' called upon for that Purpose; the Court ordered a new Writ of Error to be sued out, at the Plaintiff's Expence, and that he should pay the Defendant his Costs.

But see ante *Harding versus Avery*, ante, p. 50, and cases there cited, where it was held that the Plaintiff may sign his Judgment when he pleases, and if he thinks fit to defer Signing it till after the Return of the Writ of Error, he has a Right so to do, and might then take out Execution; and *Quere*, for it does not appear in this Case, that the Plaintiff hath in any Manner misbehaved himself.

### Webb v. Akers, ex dimiss. Burdus.

*Warner.*

Judgment in Ejectment held good, altho' a Plea was left in the Office, because the Rule was not marked with the Filazer's Stamp, signifying that the Appearance was entered.

**A** MOTION to set aside a Judgment in Ejectment, upon Affidavit that a Plea was left in the Office; it appeared there was a Plea, but the *Filazer's* Mark signifying that the Appearance was entered, was not stamped on the Rule; it was held that if a Plea in Ejectment is left in the Office, yet if the Rule by Consent is not annexed to it with the *Filazer's* Stamp, the Plaintiff may sign his Judgment.

Note; In *Trueman versus Badright, ex dimiss. Rives, Mich.* [72] 1733, *Thomson*, the like Determination was made by the Court on the same Point. *Vid. Webb v. London, post, p. 73.*

*Hammond versus Horner. East 5 Geo.*

II. 1732. [*Prac. Reg.* 300, *S. C.*]

*Cooke.*

**A** MOTION to set aside a Judgment, for that the Defendant's Attorney demanded Oyer of the Bail-Bond, and the Plaintiff signed Judgment the same Day; the Plaintiff's Counsel insisted that there was a Rule given, a Plea demanded in Writing, and Oyer not demanded till the Rule was out, and Judgment signed eight Hours after Oyer given.

The Court set aside the Judgment, and held that the Defendant ought to have a reasonable Time, after Oyer, to plead, but did not settle the Time.

Judgment set aside for not staying a proper Time after Oyer given. *Vid. Littlebale v. Smith, this Term, post, p. 73, and Hartly v. Varny, p. 96,* where it is held that Oyer must be demanded before the Rule is out.

*Whitehead versus Goodyer, Esq.; East.*

5 Geo. II. 1732. [*Prac. Reg.* 387. *S. C.*]

*Borret.*

**U**PON a Motion to set aside a Verdict, for want of fourteen Days Notice of Trial, it was alleged for the Plaintiff, that the Defendant came to *London* and staid for some Time, and therefore that *London* ought to be taken as his Place of Abode, he then residing there, and consequently that the Notice which had been given was good; but the Court were of another Opinion, and set aside the Verdict; for they said the General Rule of Notice shall not be altered upon a Defendant's coming to *London* for a few Days.

Verdict set aside for want of 14 Days Notice, tho' Defendant was in Town. *Reg. Cur. Mich. 1654, sec. 21. Vid. Poulter v. Skinner, ante, p. 59.*



**Wilson & al' v. Spencer. *Idem versus* Smith.***Cooke.*

Motion to set aside Judgment, for not paying for the Books tendered after a *Concilium* made.

*Vid. Lawson v. Hambleton, ante, p. 35, and cases there cited.*

**A** MOTION to set aside Judgments signed in these Causes for want of paying for the Demurrer-Books; the Defendants insisted that the Plaintiffs had made it a *Concilium* before the Books were tendered; the Court said that was no Excuse to the Defendants for not paying for the Books, the Plaintiff might make the Demurrer a *Concilium* again, the other being a Mistake, and held the Judgments to be regular. [73]

When Oyer is to be demanded, and in what Time after the Defendant is to plead.

*Vid. Hammond v. Horner, ante p. 72, Theobald v. Jackson, post, p. 81, Blaxland v. Burgeff, p. 95, Simpson v. Duffield, p. 143.*

**Littlehales *versus* Smith. *East. 5 Geo. II.* 1732. [*Prac. Reg. 299. S. C.*]***Warner.*

**A** MOTION to set aside a Judgment, because signed too soon after Oyer demanded; the Court said that the Defendant is to demand Oyer before the Rule to plead is out, and that he hath one Day after to plead.

**Webb v. London & al', ex dimiss. Burdus & al'. *Trin. 5 & 6 G. II.* 1732.***Thomson.*

Pleas in Ejectment withdrawn.

*Vid. Webb v. Akers, ante, p. 71, Right v.*

**I**N Ejectment, a Motion for Leave to withdraw several Pleas pleaded without the Defendant's Consent; it appeared that the Landlord (who had caused the Pleas to be pleaded) had not any Authority or Consent from the Tenant for so doing,

and that his Title was acquired only by a late Judgment in Ejectment, and there did not appear any Collusion between the Lessor or the Plaintiff and the Tenants; the Court said if the Tenants would not consent, and give the Landlord an Authority to appear and plead those Pleas, he had not, by making himself Defendant, any Power or Authority so to do, and therefore they ordered the Pleas to be withdrawn; but in the Case of an old Landlord (who had been long in Possession) and his Tenants, it was said the Court would probably have interposed in his Favour.

*Wrong, post, p.*  
99.  
But now see  
*Stat. 11 Geo. II.*  
*c. 19, s. 13.*

[74] *Whitehead versus Price. Trin. 5 Geo.*  
II. 1732. [*Prac. Reg. 245. S. C.*]

*Cooke.*

A RULE to shew Cause why Proceedings should not stay in this Court, the Cause of Action being under 40s. but the Court discharged the Rule, because the Plaintiff may amend his Declaration on Application to the Court, and set all Right.

Motion to stay  
Proceeding be-  
cause the  
Action was  
under 40s.  
*Vid. Matthews*  
*v. Holcaru, post,*  
*p. 79.*

*Huer v. Whitehead. Mich. 6 Geo. II.*  
1732. [*Prac. Reg. 378. S. C.*]

*Cooke.*

UPON a Motion by the Plaintiff to quash a *Scire facias*, because it was sued out in a wrong County; the Defendant insisted upon Costs because he had entered an Appearance; but the Court said that unless the Defendant has pleaded, no Costs are to be allowed.

A *Scire facias*  
quashed at the  
Plaintiff's Re-  
quest *quia im-*  
*providē*, with-  
out Costs.  
*Vid. Pool v.*  
*Bradfield, post,*  
*p. 109, Stat. 8*  
*& 9 W. III. c.*  
*11, s. 6.*

*Cotton & al' versus Bailie & al'. Mich.*  
6 Geo. II. 1732. [*Barnes*, 215. S. C.]

*Borret.*

Leave to pass  
a Fine of a  
former Year.  
*Vid. Harries v.*  
*Micklethwaite,*  
*post*, p. 76,  
*Sheppard v.*  
*Harris*, p. 126.

**A** MOTION for Leave to pass a Fine thro' the several Offices. It was taken in the Year 1727, and one of the Cognizors was dead; the Court ordered that the Fine should pass as of that Year, but Notice was first to be given to the surviving Cognizor.

*Fagget versus Van Thiennen. Mich. 6*  
*Geo. II. 1732. [Prac. Reg. 15. Barnes,*  
*59. S. C.]*

*Cooke.*

To amend the  
Entry of Bail  
in the Filazer's  
Book.

**M**OVED to amend the Entry of Bail in the *Filazer's* Book, by making it agreeable to the Instructions, viz. it was *Insult* in the Instructions and *Affr* in the *Filazer's* Book, and ordered to be amended *Nisi*.

*Faggot versus Van Thiennen. [75]*  
The same Term.

*Cooke.*

To amend the  
Recognizance  
of Bail.

**I**T was moved to amend the Recognizance which was taken between the same Parties in Case, and to make it in Assault agreeable to the Writ; the Court ordered the Recognizance to be amended accordingly.

Note; In *Kitchingham & ux' versus Wilbourn*, Mich. 4 Geo. II. *Thompson*, the like Amendment was cited to have been made.

Hickeringill v. Knight, in Debt; And  
Hickeringill v. Knight, in Case. *Mich.*  
6 Geo. II. 1732. [*Prac. Reg.* 138.  
S. C.]

*Thompson.*

**M**OTIONS having been made to set aside the Non-pros in these Actions, and Rules *Nisi* granted on shewing Cause, it appeared that one of the Non-pros was irregular, for the Writ being a *Clausum fregit*, the Plaintiff had delivered the Defendant's Attorney a Declaration in Covenant, so that the Defendant ought not to have signed a Non-pros; for a Plaintiff on a *Clausum fregit* may declare in any Action.

Non-pros suffered to stand because the Defendant did not apply till after Judgment, in an Action brought upon such Non-pros.

The other Non-pros was regular; but it appearing that Actions had been brought on these Non-pros, and Judgments obtained thereon, the Court discharged the Rules to shew Cause, for that the Defendant should have complained of the Irregularity sooner.

Kirwood *versus* Backhouse. *Mich.* 6 Geo.  
II. 1732. [*Prac. Reg.* 165. Barnes,  
171, S. C.]

*Cooke.*

**A** MOTION for Judgment in Ejectment; it was sworn by the Person that made the Affidavit, that he went to the Messuage in Question, and the Tenant's Wife refusing to open the Door, but speaking thro' the Wicket, he did shew her a Copy of the Declaration, and acquainted her with the

Motion for Judgment in Ejectment denied, Declaration being shewn to the Wife, but not tendered.

*Sed Vid. Roe  
v. Doe, post, p.  
115.*

Contents, and read the *English* Subscription to her, but as soon as he had so done, she shut the Wicket and refused to take the Declaration, and not being able to deliver the same, he affixed the same on the Door of the said Messuage, which the Tenant in Possession did on the same Day acknowledge to have received. The Court were divided in Opinion, *to wit*, the Chief Justice and Mr. Justice *Denton*, that it was not a good service, and Mr. Justice *Price* and Mr. Justice *Fortescue* held the contrary, so no Rule was made. [76]

*Note* ; It did not appear by the Affidavit that the Copy was tendered to the Wife, which the Court seemed to think would have been very material.

Negative *versus* Positive. *Mich. 6 Geo.*  
II. 1732. [*Prac. Reg. 169. Barnes,*  
172. *S. C.*]

*Borrett.*

Lond. ff.

Motion for  
Judgment in  
Ejectment, the  
Possession  
vacant.  
*Reg. cur. Trin.*  
32, *Car. 2.*

**A** MOTION the 23<sup>d</sup> of *November* for Judgment In Ejectment where there was a vacant Possession ; it was objected that the Motion came too late, that it should have been moved within a Week after the Beginning of the Term, according to the Rule *Trin. 32 Car. II.* but upon reading thereof the Court were of Opinion, that vacant Possessions were not within the Meaning of that Rule.

Hamson *versus* Chamberlin. Mich. 6  
Geo. II. 1732. [Barnes, 3. S. C.]

*Borret.*

**A** MOTION to amend the Record of an Issue of *Nul tiel Record* by the Writ of *Scire facias*; all the Court, after much Debate, were of Opinion that it might be amended by the *Sci' fac'*, and ordered the Amendment accordingly.

Issue of *Nul tiel Record* amended by *Scire facias*.  
*Vid. Cartwright v. Gardner, post, p. 131.*

Harvies *versus* Micklethwaite. Mich. 6  
Geo. II. 1732. [Barnes, 214. S. C.]

*Borret.*

**A** MOTION against passing of a Fine, the Caption being taken the 21<sup>st</sup> Day of May; and the Wife of the Cognizor died the 22<sup>d</sup> of May, upon much Debate and Examination into the Practice, and it appearing the King's Silver was paid, the Court ordered that the Fine do pass.

Fine ordered to pass after the Wife of the Cognizor was dead.  
*Vid. Cotton v. Bailie. Ante, p. 74; and cases there cited.*

[77] Warwick *versus* Fig. Mich. 6 Geo. II.  
1732. [Prac. Reg. 189. Barnes, 196.  
S. C.]

*Thompson.*

**A** MOTION to set aside an Execution taken out upon a Judgment signed in *Trinity Vacation* after the Expiration of the Writ of Error, which was returnable *tres Trin'*. The Court were of Opinion that the Plaintiff could not regularly sign his Judgment and take out Execution thereon, till *Mi-*

Execution taken out after the Return of a Writ of Error set aside.  
*Vid. Harding v. Avery, ante, p. 51;*

and cases there cited. *Cooke v. Harroch*, post, p. 88.

(a) It seems otherwise where the Writ of Error is returnable the first Return of the Term.

*Vid. Ayres v. Lenthall*, 1 Mod. 112.

*chaelmas* Term following, because every Judgment is of the first Day of the Term; so the Judgment having relation to the first Day of the Term, must be construed to be signed pending the Writ of Error, which was returnable *tres Trin.* (a) and consequently the Writ of Error attached upon the Judgment and was a *Superseas*, and Execution afterwards was irregular; which therefore the Court set aside, and ordered *Wreathock* the Plaintiff's Attorney to pay Costs.

Revel *versus* Snowden. *Mich. 6 Geo. II.*  
1732. [*Prac. Reg. 56. S. C.*]

*Borret.*

Bail in an Action of Debt on the Judgment, because the Plaintiff had no Bail in the first Action. Defendant being in Prison.

*Vid. Jackson v. Duckett*, ante, p. 32, and cases there cited.

**A** MOTION for a Common Appearance, upon the Determination in the Case of *Jackson* and *Duckett*, ante, p. 32, because the Defendant was held to Special Bail upon the first Action; the Case was, The Defendant had been arrested and held to Special Bail, and afterwards rendered in Discharge of his Bail, and the Plaintiff proceeded against the Defendant as a Prisoner, and recovered a Judgment; and this being an Action of Debt brought upon that Judgment, and the former Bail being vacated by the Render, the Court held that the Plaintiff might well hold the Defendant to Bail in this Action, he not now having Bail in the first Action.

But now by a General Rule, *Hil. 8 Geo. II. reg. 1.* *If a Prisoner be discharged for want of Prosecution, and afterwards is arrested by Action of Debt on the Judgment obtained in the Cause, a Common Appearance shall be accepted.*

Bowler *versus* Owens. Mich. 6 Geo. II.  
1732. [Barnes, 432. S. C.]

[78] **A** MOTION by an Out-Pensioner of *Chelsea College* for a Common Appearance, suggesting that he is a Soldier, and within the A& 5 Geo. II. cap. 2, for preventing Mutiny and Desertion; the Court denied the Motion, and held the Defendant no Soldier within the Meaning of that Statute.

An Out-Pensioner of *Chelsea College* denied a Common Appearance, not reckoned a Soldier. *Vid. Nicbolls & al' v. Wilder, post, p. 89. Stat. 5 Geo. II. cap. 2, 6 Geo. II. cap. 3, 9 Geo. II. cap. 2.*

Norton *versus* Gilbert. Mich. 6 Geo.  
II. 1732.

*Borret.*

**A** MOTION to reverse an Outlawry at the Plaintiff's Costs, for that the Defendant was outlawed in a Foreign County; on shewing Cause it appeared the Plaintiff had good Reason to proceed to Outlawry, the Defendant being a Clergyman and never appearing but on a *Sunday*, and altho' he was outlawed in a different County from that where he dwelt, yet the Outlawry was in the County where the Action was laid to arise. The Court gave their Opinions *seriatim*, and against the Opinion of the Chief Justice discharged the Rule to shew Cause, for that they held the Outlawry, tho' not in the County where the Defendant dwelt, yet where the Cause of Action was laid to arise, to be regular, and that it was not necessary to shew an Attempt to arrest the Defendant.

Motion that the Plaintiff reverse an Outlawry in another County at his own Costs, denied. *Vid. Hayes v. Longbotham, ante, p. 61; and cases there cited.*



*Hirst versus Dixon. Mich. 6 Geo. II.*  
1732. [*Prac. Reg.* 36. S. C.]

Costs ordered  
the Attorney  
on taxing his  
Bill, a sixth  
Part not being  
taken off.  
*Stat. 2 G. II. c.*  
23, l. 23.

*Cooke.*

**A** MOTION for the Plaintiff to have the Costs of taxing his Bill, there being only a Ninth Part taken off upon the Taxation, and a Rule to shew Cause was granted, which Rule was afterwards made absolute by the Court.

*Threlkeld versus Goodfellow. Mich. 6*  
*Geo. II. 1732. [Prac. Reg. 1. Barnes,*  
*224. S. C.]*

*Thomson.*

Special Impar-  
lance when to  
be allowed.

**A** MOTION to have the Imparlance Roll brought into Court, and that a Special Imparlance might be entered, in order that the Defendant might plead in Abatement; the Question was whether a Plea in Abatement could be pleaded within the first four Days of the subsequent Term, without a Special Imparlance, or whether a Special Imparlance should be granted to that end; the Court declared it was the established Practice, where the Declaration is delivered so late that the Defendant is not obliged to plead in the same Term, for him to apply to the Prothonotary for a Special [79] Imparlance, within the first four days in the succeeding Term, or that he could not plead in Abatement, which he may do, having such Special Imparlance; but to all Declarations, where the Defendant is to plead the same Term, the Defendant may plead in Abatement within four Days after Declaration de-

*Vid. Anon.*  
*ante, p. 23; and*  
*case there cited.*

livered, without any Imparlance; but in such Case after the four Days no such Plea shall be accepted, tho' no Rule to plead be given.

Note; In *Napper* against *Biddle*, *Barnes* 334, *Cooke*, there was the like Resolution by the Court upon the same Point.

Haydon, Executor, v. Norton. *Mich.*  
6 Geo. II. 1732.

*Borret.*

A BILL against a Member of Parliament, and a Demurrer thereto; the Plaintiff moved to discontinue; and it was debated whether he (being an Executor) should pay any Costs on such Discontinuance. Resolved, that Costs must be paid, it being the Default of the Executor himself.

An Executor must pay Costs on a Discontinuance. *Vid. Lamley v. Nichols*, ante, p. 14, and cases there cited.

Oades *versus* Forrest. *Mich.* 6 Geo. II.  
1732. [*Prac. Reg.* 210. *Barnes*, 196.  
S. C.]

*Thompson.*

A *SCIRE facias* was sued out into *Middlesex* against the Defendant as Bail, and a *Fi' fa'* issued, directed to the Sheriff of that County who returned *Nulla bona* thereon, then a common *Fi' fa'* was executed in *London* without mentioning it to be a *Testatum*, and now upon Motion to set the same aside, the Court held it good, and said there was no Occasion to insert the Form of a *Testatum* in the Writ, in order that the Writ itself might shew it was a *Testatum*; and they said, if it had been necessary, they would have given Leave to amend.

*Fieri facias* held good without making it in Form of a *Testatum*.

Mathews *versus* Holcarn. Mich. 6 Geo.  
II. 1732. [Barnes, 497. S. C.]

Thomson.

A Motion to the Jurisdiction of the Court, the Debt being under 40s. *Vid. Whitehead v. Price, ante, p. 74.*

**A**N Action of Debt for Rent *quod reddat* 21s. and concludes *ad dampnum* 100s. On a Motion to stay Proceedings, the Court not having Jurisdiction, it was held that the *ad dampnum* gave the Court Jurisdiction, and that if it had been necessary, the Court might permit the Plaintiff to add a new Count.

Smith *versus* Paschall.

[80]

Cooke.

The Damages laid in the Declaration are the Cause of Action.

*Vide the next Case.*

By the Stat. 5 Geo. II. c. 27, after the Expiration of that Session, viz. 1 June 1732, all Process under 10 l. to be in English; and by 4 Geo. II. c. 26, after the 25th of March, 1733, all Process whatsoever to be in English.

**A** MOTION to set aside a Verdict because the proceedings were in *Latin*, and the Jury had only found 8l. Damages; the Court seemed to be of opinion, that if the Action was commenced before the Expiration of the Sessions, then all Proceedings must be in *Latin*, and not one Part in *English* and the other in *Latin*; but as for the Cause of Action, whether it should be construed to be what is laid in the Declaration, or what is found by the Jury, was the Question, and a Rule *Nisi* was granted.

Note; *Scot versus Ferral*, Barnes, 240. Cooke, the Chief Justice delivered the Opinion of the whole Court, that the Damages laid in the Declaration should be deemed to be the Cause of Action, and all the Rules which had been granted for shewing Cause, in relation to the Construction of the Act in this Point, should be discharged.

West *versus* Nicholls. Mich. 6 Geo. II.  
1732. [*Prac. Reg.* 321. Barnes,  
340. S. C.]

*Thomson.*

**P**ROCESS in *English*, and Declaration delivered in *Latin*; on Motion to stay Proceedings for that the Declaration should have been in *English*; for the Plaintiff it was insisted that this Declaration being laid *ad dampnum* 40*l.* should be considered as delivered by the By; and therefore notwithstanding the Writ was in *English*, yet the *Dampnum* being laid 40*l.* in the Declaration, the Declaration must be in *Latin*; of which opinion was the Court, but that if the Plaintiff had declared for under 10*l.* he must have declared in *English*.

Writ in *English* and Declaration in *Latin* *ad Damp.* 40*l.* is by the By. *Vide the preceding Case.*

Note; *Webster versus Jordan*, East. 6 Geo. II. *Thomson*, a Declaration in *English* to the Damage of the Plaintiff 40*l.* and for that Reason Judgment was stayed.

[81] Welberry *versus* Lister.

*Thomson.*

**A** MOTION to put off a Trial upon Affidavit of several Witnesses being wanting, who were sworn to be material Witnesses, as he believes; the Motion was denied because it is not sworn positively that they are material, which is always required, for that the Court will not delay the Plaintiff without manifest cause.

Motion to put off Trial denied. *Vid. Price v. Warren*, *post*, p. 96. Such Motion must be made two Days before the Trial, *Vid. post, Roberts v. Doune*, *post*, p. 98.

Bartholomew *versus* Golding. *Mich.* 6  
*Geo* II. 1732. [*Prac. Reg.* 121.  
*Barnes*, 291. *S. C.*]

*Borret.*

When Judgment is set aside for Irregularity, the Plaintiff must deliver another Declaration.

**A** MOTION to set aside Judgment ; it appeared that a Judgment had been set aside in the same Cause this Term for Irregularity in the Notice, and upon that the Plaintiff gave fresh Notice, without delivering a new Declaration, imagining the first Declaration would stand good ; but the Court set aside this Judgment also, for the Plaintiff should have filed another Declaration according to the second Notice.

### *Friend versus Mullens.*

*Cooke.*

Proceedings on the Bail-Bond stayed, the Plaintiff having declared in the Original Action.

**T**HE Defendant moved to stay proceedings on the Bail-Bond, and to amend a Mistake in the Bail-piece, which Mistake was the Reason that the Plaintiff had assigned the Bail-Bond. It appeared the Plaintiff had delivered a Declaration in the Original Action, whereby he had concluded himself, and therefore could not proceed on the Bail-Bond ; Proceedings were ordered to stay.

*Note* ; the Plaintiff might have delivered the Declaration *de bene esse* before the Bail had been actually filed.

Theedham *versus* Jackson. Mich. 6 Geo.  
II. 1732. [*Prac. Reg.* 26. Barnes,  
238. S. C.]

*Thomson.*

IN this Case the single Question was, Whether the Defendant should have the same Time to plead after Oyer given, as he had at the Time Oyer was demanded; the Court held he should, and set aside [82] the Judgment, which was signed the next Day after Oyer given, the Oyer being demanded two Days before the Rule was out.

Time of pleading after Oyer given. *Vid.* *Hammond v. Homer*, ante, p. 72; and cases there cited.

Lane, *vid'*, *v.* Newman. Hil. 6 Geo. II.  
1733.

*Cooke.*

A MOTION by Mr. Serjeant *Glyde* to change the Venue from *London* to *Exeter*, upon Affidavit; but denied, for the Court will not change the Venue to a City and County of itself without Consent of the Parties.

Note; In *Cowling versus Reynoldson*, Trin. 6 & 7 Geo. II. *Thomson*, the like Motion was again for the same Reason denied by the Court.

Motion to change the Venue to *Exeter* denied. *Vid.* *Gardiner v. Forbes*, ante, p. 36. *Biddolph v. Browne*, p. 41. *Herbert v. Shaw*, post, p. 91; and cases there cited.

Egleton *v.* Newman. *Idem v.* Senef.  
Hil. 6 Geo. II. 1733. [*Barnes*, 475.  
S. C.]

*Cooke.*

THE Defendants upon *Nul tiel Record* shew that the Plaintiff declared against the

Motion on *Nul tiel Record*, the Defendants

shew the Variance. *Vid. Watkinson v. Sawyer, ante, p. 44.*

Defendants, upon a Judgment recovered against *Curphey*, when by the Record it appears that the Judgment was against *Scurfee*; which the Court held was a material Variance, and therefore Judgment was given for the Defendants.

*Simpson versus Gray & ux'. Hil. 6 Geo. II. 1733. [Prac. Reg. 377. Barnes, 197. S. C.]*

*Borret.*

No Execution upon a Judgment after the Year, without reviving by *Scire facias*, notwithstanding the Cause had been staid by Injunction. *Vid. Booth v. Booth. Salk. 322; 6 Mod. 288. S. C.*

**A** MOTION to set aside an Execution, being sued out after the Year, without reviving the Judgment by *Scire facias*; the Plaintiff insisted, that he had been tied up by an Injunction of the Court of *Chancery*, and for that Reason there was no Necessity to sue out any *Scire facias*; but the Court overruled his Reason; for the Courts of Law do not take Notice of *Chancery* Injunctions, as they do of Writs of Error, and ordered the Execution to be set aside, and that the Plaintiff should pay the Defendant his Costs; but by Consent no Action was to be brought by the Defendant.

*Pace versus Ellifson & ux'.*

[83]

*Cooke.*

Non-pros for want of Replication, where *Non Assumpsit* was pleaded as to Part, and Demurrer joined as to the Residue.

**A** MOTION to set aside Non-pros for want of a Replication; the Defendant pleaded *Non Assumpsit* to Part, and in Abatement to the Residue; upon the *Non Assumpsit* no Issue was joined, but Demurrer to the Abatement; upon which the Defendant joined in Demurrer and signed a Non-pros for want of a Replication to the *Non Assumpsit*, and

at the same Time paid for the Demurrer-Books, and defended the Argument. On arguing the Demurrer, Judgment was given against the Defendant, and a *Respondeas ouster* awarded; and now, upon hearing Counsel on both Sides, the Court set aside the Non-pros, but ordered the Plaintiff to pay the Costs thereof, but the Defendant was not to be allowed any Costs of the Motion.

Wife & ux' v. Lawrence & al'. Hil. 6  
Geo. II. 1733. [*Prac. Reg.* 224.  
*Barnes*, 59. S. C.]

Cooke.

A MOTION to discharge the Defendants, being taken on a *Capias* in *Withernam*, after *Capias*, *Alias*, and *Pluries* on a *Homine replegiando* had been issued; it was insisted that the *Capias* in *Withernam* had issued irregularly, for that no Return was made upon the *Capias* or *Alias*, but on the *Pluries* only an *Elongata* was returned. The Court granted a Rule to shew Cause; afterwards the Defendants waived their Motion, and being brought up by *Habeas Corpus* came and offered to put in Bail as soon as the Plaintiff had declared against them, and prayed that, if the Plaintiffs did not declare against them *instantly*, they might be nonsuited and pay Costs; the Plaintiffs thereupon delivered a Declaration in Court, and the Defendants pleaded *Non ceperunt*; one of the Defendants being an Infant was admitted in Court by *Joseph Minall* her Guardian, who was also one of the Defendants; after the Guardian was bound in a Recognizance of 400*l.* by his Consent, as well for the Infant *Anne Lawrence*, as for

*Habeas Corpus cum Causa* upon a *Homine Replegiando*. Vid. *Illatt v. Liffett*, ante, p. 39.



his Wife *Mary Minall*, severally, and the Bail in 200*l.* severally, viz. *John Nichols*, *Matthew Langley*, *Samuel Kirton* and *Benjamin Godfrey*, according to the Form in the Case of *Ilatt & ux' versus Lisset*, ante, p. 39. Upon this the Sheriff was discharged, and the Defendants were set at Liberty.

*Tasker versus Geale & al'. Hil. 6 Geo. [84]*  
II. 1733. [*Barnes*, 429. S. G.]

*Cooke.*

Attachment upon a *Rescous* and *Capias* in the same Writ. *Vid. The King v. Phillips*, post, p. 88. *Bridger v. Coleby*, p. 126. *Officina Brevium*, p. 194. *Tit. Rescous.*

**A** *RESCOUS* was returned, upon which the Filazer made out an Attachment, and in the same Writ he inserted a *Capias* with an *Acetiam*, as a Continuance of the former *Capias*, in order to prosecute the Suit against the Defendant; and now the Court was moved to set aside such Writ, upon which the Defendant had been arrested and was brought up by *Habeas Corpus*, and committed to the *Fleet* for want of Ball; but the Court held the Proceedings intirely regular, and that the Writ was made out according to common Form, and therefore denied the Motion.

An Attachment was granted against one *Clofe*, the Keeper of *Ilchester Gaol*, for permitting the escape from the Gaol of a person in custody, on a *Cap. Utlegatum*, as appears from a MS. note of Lord King. But see *Bacon's Ab. tit. Attachment (A)* as to an information against a gaoler, where the escape is a voluntary one.

Thomas *versus* Bushell. Hil. 6 Geo. II.

1733.

Cooke.

**A** MOTION to set aside the Judgment, upon Affidavit that the Declaration was left in the Office, whereas the Defendant had entered his Appearance, and the Plaintiff well knew the Defendant's Attorney, and therefore should not have left it in the Office, but it appearing that Notice thereof had been delivered to the Defendant's Attorney, the Court declared, that leaving a Declaration in the Office, and giving Notice to the Defendant's Attorney, was equivalent to the Delivery of it to the Attorney, and so the Judgment was held to be regular; and it was also declared, that the Plaintiff's Attorney is not bound to give Notice the same Day the Declaration is left in the Office, but may give Notice in any reasonable Time afterwards, but it is deemed as no Declaration but from the Day of Notice.

Judgment held good upon a Declaration left in the Office, tho' the Defendant's Attorney was known, he having Notice given him of the Declaration. *Vid. Morris v. Parry, ante, p. 50; and case there cited.*

Note; In *Hale versus Breedon, Barnes, 4*, the like Resolution was made upon the same Point of Practice.

Stanton *versus* Winch. Hil. 6 Geo. II.

1733. [*Prac. Reg. 449. S. C.*]

Thomson.

**A** MOTION to set aside an Inquiry, being executed the Day after it was returnable, the Return-Day being *Sunday*, and the Inquisition taken on the *Monday*; the Court held the Execution of the Inquiry irregular, and set the same aside; but the Plaintiff had Leave to proceed to the Execution

Inquiry set aside, being executed the Day after it was returnable. *Vid. Suttle v. Layton, post, 93.*

of a new one upon Payment of Costs ; and it was [85]  
said a Writ of Inquiry may be executed at any  
Time on the Return-Day before the Rising of the  
Court.

**Jenkinson v. Staples, Spooner Vouchee.**  
*Hil. 7 Geo. II. 1734. [Prac. Reg. 371.  
S. C.]*

*Cooke.*

Recovery  
amended by  
putting in several  
Parishes.  
*Vid. Bedford v.  
Cullen, ante, p.  
9 ; and cases  
ibere cited.*

**A** MOTION to amend a Recovery, by inserting  
several Parishes which were left out in the  
Instructions to the Cursitor ; it appeared that the  
Deed to lead the Uses of the Recovery was dated  
the 7th of October, the Writ of Entry tested the  
11th of December, and returnable in *Mensem Mich.*  
The Court ordered the Recovery to be amended.

**Spring versus Bilson. Hil. 6 Geo. II.**

1733.

*Thomson.*

No Tender or  
bringing Money  
into Court after  
a regular Judgment.  
*Vid. Smith v. Dobby,  
ante, p. 46 ; and  
cases ibere cited.*

**A** MOTION to bring Money into Court after  
Judgment had been signed, and set aside on  
Payment of Costs, but denied because Judgment had  
been regularly signed.

Makepeace v. Stevens and others. *Hil.*  
6 Geo. II. 1733. [*Prac. Reg.* 324.  
*Barnes*, 435. *S. C.*]

*Cooke.*

**I**N Ejectment, on the Trial at the Assizes, a Case was made and referred to the Judge of Assize, and he afterwards referred it to the Opinion of the Court; and now a Question arose in what Manner the *Possea* is to be delivered to the Party, whether by a Certificate from the Court by Rule to the Judge who tried the Cause, and then by his Order, or whether the Court should make a Rule for the Delivery thereof, without applying to the Judge of Assize; the Court, after due Consideration, made a Rule for the Delivery of it, without any Application to the Judge of Assize.

A Case made before a Judge of Assize, and he refers it to the Court, and the Court direct the Delivery of the *Possea*.

Godfrey *versus* Mathews & al'. *Hil.* 6  
Geo. II. 1733. [*Prac. Reg.* 287. *S. C.*]

*Cooke.*

[86] **A** COMMON *Clausum fregit* was sued out, returnable the first Return of this Term, a Declaration filed *de bene esse* pursuant to the Rule made in *Easter* Term, 3 Geo. II. and Notice thereof delivered, and a Rule to plead given; the Plaintiff signed Judgment before the Expiration of eight Days from the Delivery of such Notice, tho' the Defendant lived above 20 Miles from *London*. Upon a Motion to set aside the Judgment, the Court held that the Plaintiff should have staid eight Days

Judgment set aside because signed before the eight Days expired. *Vid. Laxenby v. Bradley*, post, p. 94.

after the Delivery of the Notice of the Declaration, tho' he gives but a four Days Rule to plead, and therefore set aside the Judgment.

*Zouch versus Bell. Hil. 6 Geo. II. 1733.*  
[*Prac. Reg. 448. Barnes, 118.*]

*Thomson.*

Costs for not proceeding to execute Inquiry after many Vexatious Notices denied.

A MOTION for Costs for not proceeding to execute a Writ of Inquiry; the Defendant had been put to very great Expences by the Plaintiff's causing many Notices to be delivered, which had never been countermanded; on hearing Counsel on both Sides the Motion was denied, for it has never been the Practice to grant Costs for not proceeding to execute Writs of Inquiry. (a)

(a) But see *Reg. Cur. Trin. 13 Geo. II. by which the Practice is altered, and costs are now given.*

*Dixie, Bart. v. Somerfield & al'. Hil. 6 Geo. II. 1733. Intr. Trin. 5 & 6 Geo. II. rot. 706. [Prac. Reg. 107. S. C.]*

*Cooke.*

Full Costs denied in Trespas. *Vid. Beck v. Nicholls, ante, p. 24; and cases there cited. Stat. 22 & 23 Car. II. c. 9, s. 136.*

IN Trespas (inter alia) *quare Clausum freger' & solum, &c. cum rutris, marris & lignonibus effoder' & subverter', nec non palos, repagula & januas, scilicet, centum palos, &c. ibidem fix' & erect' ad valenc', &c. freger', diruer' & prostraver', &c.*

A Verdict was found for the Plaintiff, and Damages under 40s. and now a Motion was made that the Plaintiff might be allowed full Costs, and a

Rule *Nisi* granted for that Purpose ; but on shewing Cause the Rule *Nisi* was discharged ; for the Freehold might have come in Question in this Action, therefore the Judge's Certificate was necessary to intitle the Plaintiff to full Costs.

[87] *Gynes qui tam v. Stephenfon.*

*Cooke.*

AN ACTION upon the Statute of 5 *Eliz. cap. 4.* for exercising the Trade of a *Glover*, without serving Seven Years Apprenticeship, and a Verdict for the Plaintiff, and 4*l.* given for the Penalty pursuant to the Act ; the Defendant moved that Proceedings should be staid upon Payment of the 4*l.* and a Rule to shew Cause being granted, upon the Plaintiff's shewing Cause, the Question was, Whether any Costs should be allowed, and the Rule being enlarged till next *Easter* Term, the Court, upon hearing Counsel on both Sides, then held that no Costs ought to be allowed, for the Statute gives none ; and the Plaintiff in this Case is not a Party injured, but a common Informer, and therefore is not within the Meaning of the Statute of *Gloucester*, which gives Costs only where he should recover Damages ; but in Case the Plaintiff had been a Party grieved, and recovered a certain Penalty, such Penalty should be considered as a Recompence for his particular Damage, and he should have Costs within that Stat. The former Rule was made absolute.

Costs denied upon a Verdict on the Stat. 5 *Eliz. c. 4.* *Vid. Pample v. Tingley, ante, p. 22.*

*Stat. Gloucester, 6 Ed. I. c. 1. Vid. Whitbam v. Hill. Barnes, 151.*

Attachment  
against a High  
Sheriff on Affi-  
davit of Service  
of Rule on him.  
See *Arne v.*

*Nesler*, post, p.  
123.

(a) *The Court have since thought it more proper that such Rules should be served on the Under-Sheriff, and therefore it is now expressed in the Rule, that the Sheriff shall peremptorily return the Writ on Notice to be given to his Under-Sheriff.*

### Franklin *versus* Nash.

*Thomson.*

**A** MOTION for an Attachment against the Sheriff, upon a peremptory Rule to return a Writ, on Notice to him or his Under-Sheriff, and Affidavit that the Rule was served on the (a) High Sheriff, and that the Writ was not returned or filed with the *Custos Brevium*.

The Court said that the Notice to the High Sheriff was good, for both he and his Under-Sheriff are subject to the Court, and granted an Attachment against the High Sheriff.

Cooke *versus* Harrock. *Eaft.* 6 Geo. II. [88]  
1733. [*Barnes*, 197. S. C.]

*Cooke.*

Execution good  
tho' a Writ of  
Error, the final  
Judgment being  
signed after the  
Expiration of  
the Writ of  
Error. *Vid.*

*Harding v.*

*Avery*, ante, p.

50. *Warwick*

*v. Figg*, p. 77.

**A** MOTION to set aside an Execution taken out after the Expiration of the Writ of Error; it appeared the Writ of Error was returnable before the Final Judgment was signed, and therefore the Court held that it could not remove the Record of that Judgment; and denied the Motion.

*Note*; If the Writ of Error had been returnable after the first Return of the Term in which Judgment was signed, it would have removed the Record, such Judgment having relation to the Day in Bank.

Hefelton *versus* Lister, Esq.

*Borret.*

**A** MOTION to justify Bail upon Examination of the Bail in Court; the Plaintiff's Attorney shewed to the Court that the same Persons were Bail in another Cause, and represented that he verily believed they were very insufficient, for the Defendant himself had told him they were not worth a Groat, he likewise informed the Court that one *Dewell* a Sheriff's Officer had just then been with him, and told him if he would go out of Court, the Defendant would give him Half a Guinea; *Dewell* was likewise examined upon Oath, and declared the same; upon this the Court all agreed that this was an Attempt in the Defendant to pervert Justice, and a notorious Contempt of the Court, and committed him to the Fleet till farther Order.

A Defendant committed to the Fleet, for endeavouring to bribe the Plaintiff's Attorney not to appear against him on justifying Bail.

The King *versus* Philips. *East.* 6 Geo.  
II. 1733. [*Barnes*, 429. S. C.]

*Thomson.*

**T**HE Court declared that, upon a *Rescous* returned, an Attachment goes of course without Motion, and when the Party offending is brought in he is to be fined, and not examined upon Interrogatories, because the Return of the Sheriff is a Matter of Record, and not traversable, and the Party, if he is injured, may bring an Action against the Sheriff for a false Return.

If a *Rescous* be returned on *mesne Process*, the Plaintiff may take out an Attachment as of course, and so bring the

Attachment of Course on a *Rescue* returned. *Vid.* *Tahter v. Geale*, ante, p. 84. *The King v. Tyrrel*, *Prac. Reg.* 375. *Barnes*, 430, S. C. *Highway v. Darby*, 2 *Vent.* 175. *Fawcett v.*



*Catten, Sir T. Jones, 39.*

party in to answer interrogatories, without moving the Court for a rule to shew Cause; but if the Plaintiff take the latter course, he thereby gives the Rescuers liberty to controvert the fact by Affidavits in lieu of being examined on Interrogatories.

*Hale v. Carpenter, C. B. Trin. 1 Geo. I, from Lord King's MSS.*

[In the same case, it was held that a Rescue is no return to a Ca. sa. and the Sheriff ought to be amerced for making such a return.]

### *Gilbert versus Morshead.*

[89]

*Berret.*

Motion for a new Writ of Inquiry, in an Action for mesne Profits, where the Jury gave small Damages. *Vid. Gilbert v. Nightingale, post, p. 135.*

IN an Action of Trespass for mesne Profits, a Motion was made by the Plaintiff, for Leave to quash his own Writ of Inquiry, and to issue a new one, upon several Affidavits on his Behalf, that the Jury gave very small Damages; that the Sheriff would not admit the Plaintiff to prove his Title, in order that the Jury might assess Damages from the Time it accrued to him; and that the Defendant's Attorney and others influenced the Jury to favour the Defendant. The Court seemed to think that this was a Misbehaviour in the Sheriff and the other Persons, and granted a Rule to shew Cause.

### *Hart versus Jewks. East. 6 Geo. II.*

1733.

*Thomson.*

In Dower, a peremptory Rule to plead. *Vid. Delafontaine v. Minge, ante, p. 38; and case there cited.*

ON a Motion to set aside a Judgment in Dower, because the Plaintiff had not given a peremptory Rule to plead, as usual in Real Actions; it appeared that the Defendant had pleaded a Plea in Abatement, but without an Affidavit to verify the

Truth of the Plea; the Court set aside the Judgment, and allowed the Defendant four Days Time to plead.

*Note;* The Judgment in this Cause was set aside, because no peremptory Rule to plead was entered, otherwise the Judgment would have been regular: a Plea in Abatement without Affidavit to support the Truth thereof being held to be no Plea at all.

Nichols & al' *versus* Wilder. *Eaft.* 6 *Geo.*  
II. 1733. [*Prac. Reg.* 60. *Barnes*,  
432. *S. C.*]

*Cooke.*

**A** MOTION to discharge a Soldier arrested and held to Bail, and a Rule *Nisi* granted; upon shewing Cause it appeared that this was an Action of Debt upon a Judgment, and that the Original Action, in which the Judgment had been recovered, was for a Debt under 10*l.* The Court said the Act of Parliament for preventing Mutiny (a) &c. intended the Debt that was due at the Time of holding to Bail, and this being an Action of Debt, on a Judgment for upwards of 10*l.* tho' the Original Cause of Action did not amount to so much, is not within the Intent of the Act; and therefore they discharged the Rule to shew Cause.

Motion to discharge a Soldier arrested.  
*Vid. Bowler v. Owens, ante, p.* 77.

(a) *Stat.* 5 *G.*  
II. *c.* 2.

*Note;* In *Bilson versus Smith*, *Prac. Reg.* p. 59, the like Resolution upon the same Point. But since, by the *Stat.* 13 *G.* II. *c.* 10, for preventing Mutiny and Desertion, the original Debt must be 10*l.*

*Daking versus Thornhill. East. 6 Geo. [90]*

II. 1733. [*Prac. Reg. 213. Barnes, 198. S. C.*]

*Thomson.*

Where the Plaintiff may levy Interest and Costs to the Time the Execution is completed.

**A** VERDICT and Judgment for the Plaintiff on a Bond, on which Execution was taken out, and the Debt, Interest and Costs, to the Time the Execution was completed, levied out of the Penalty; the Defendant moved for Restitution of all the Money levied, being 37*l.* 10*s.* except 21*l.* which was allowed on the *Postea*; this Matter was long debated by the Court, at length they refer'd it to Mr. Prothonotary *Thomson*, to compute what was due, as between Attorney and Client, and afterwards they seemed to be of Opinion, that in all such Cases the Prothonotary should allow Interest and Costs from the Time of the Judgment to the completing the Execution.

*Osborn vid' versus Carter. East. 6 Geo.*

II. 1733. [*Barnes, 319, S. C.*]

*Cooke.*

Execution of an Outlawry on a *Sunday* set aside, but an Attachment denied.

**A** MOTION against several Persons for executing an Outlawry on a *Sunday*; the Rule was to shew Cause why the Defendant should not be discharged, and why an Attachment should not be issued against them; upon debating this Matter the Rule for the Discharge of the Defendant was made absolute, and that Part of the Rule for an Attachment was discharged, because the A& of 29 *Car. II. cap. 7, s. 6*, gives a Remedy by Action.

The King *v.* Tirrel & al'. *Trin.* 6 & 7  
Geo. II. 1733. [*Prac. Reg.* 375.  
*Barnes*, 430. *S. C.*]

*Cooke.*

**A** RESCOUS returned this Term, and a Motion by the Rescuers to submit to a Fine, or to be admitted to Bail, they being advised to bring an Action against the Sheriff for a false Return: The Court declared that if the Rescuers intended to bring an Action against the Sheriff, they would admit them to Bail, and respite the Fine till the Event of such Suit, and upon the Rescuers offering to bring an Action and entering into a Recognizance for their Personal Appearance, the Court ordered them to be discharged.

*Nota*; A Verdict being given against the Sheriff, the Court on Motion and producing the Poſtea, ordered the Recognizance to be discharged.

Rescuers admitted to Bail, and Fine respited till Determination of an Action against the Sheriff for a false Return. *Vid. The King v. Philips, ante, p. 88; and cases there cited.*

[91] Herbert *versus* Shaw. *Trin.* 6 & 7 Geo.  
II. 1733. [*Prac. Reg.* 429. *Barnes*,  
478. *S. C.*]

**A** MOTION to change the Venue from *Mid-dlesex* to the County Palatine of *Lancaster*, but denied; for the Court hath constantly denied such Motions for changing the Venue into a County Palatine.

Venue not changed to a County Palatine. *Vid. Gardiner v. Forbes, ante, p. 36; and cases there cited. Lady Falconbridge v. Forrest, Stran. 807. 1 Barnard. 60, 68. S. C. Price v. Griffith, 1 Wils. 221.*

Church *versus* Jafon, Bart. Trin. 6 &  
7 Geo. II. 1733. [*Prac. Reg.* 322,  
*Barnes*, 241. S. C.]

*Cooke.*

Motion to set  
aside Judgment,  
the *Alias dict'*  
being in *Latin*,  
as in the Bond,  
but denied.

**A** MOTION to stay Judgment in an Action of Debt on a Bond, the Declaration being in *English*, but the *Alias dict'* in *Latin*, as in the Bond; and a Rule *Nisi* was granted; upon shewing Cause it was insisted for the Plaintiff that the *Alias dict'* is a necessary Description of the Person that entered into the Bond, and as there might probably be some Variance between his Description therein and the Addition in the Declaration, the Declaration would not be good without it; the Court held it was a good Declaration, and therefore discharged the Rule to shew Cause.

*Nota*; The Court seemed to think that it was not material whether the *Alias dict'* were inserted or not, and that if an *Alias dict'* be inserted in a Declaration upon a Specialty, it must agree literally with the Deed, or the Declaration will be bad even on *Non est factum*.

### Harwood *versus* Denny.

Declaration  
and Issue of the  
same Term,  
only the Plea,  
Replication,  
&c. in the  
latter to be paid  
for. *Vid. Ryder*  
*v. Sumnerfield*,  
*post*, p. 93.  
*Atterbury v.*  
*Benson*, 2. *W.*  
*Black*. 1098;  
and cases there  
cited.

*Thomson.*

**A** DECLARATION and Issue of the same Term, the Plaintiff's Attorney insisted upon being paid for two Copies of the Declaration, otherwise he threatened to sign Judgment; to prevent which, the Defendant's Attorney paid for both, but afterwards moved in the Treasury that the Plaintiff's Attorney should return the Money he received for one of those Copies; which the Court ordered accordingly.

[92] *Panter versus Coppin*, vid'. *Trin.* 6 & 7  
*Geo. II.* 1733. [*Barnes*, 241. *S. C.*]

*Thomson.*

**A** MOTION to set aside Judgment, a Plea having been delivered; it was insisted upon by the Plaintiff's Counsel that the Defendant had pleaded an Outlawry in Bar, but had not pleaded it *sub pede sigilli*, as he ought to have done; but the Court set aside the Judgment, and said if a Plea in Bar is insufficient, the Plaintiff should apply to the Court or demur, and not sign Judgment; for the Court, and not the Party, is to judge whether or no Matters are properly pleaded.

Judgment set aside, being signed after a Plea of Outlawry in Bar, not pleaded *sub pede sigilli*.  
*2 Vent.* 282.

*Morse versus Farnham.* *Trin.* 6 & 7  
*Geo. II.* 1733. [*Prac. Reg.* 33. *Barnes*,  
 242. *S. C.*]

*Thomson.*

**I**N this Cause, the Plaintiff had entered an Appearance for the Defendant one Day too soon, and consequently irregular, but the Defendant having received a Declaration, and suffered Judgment to go, and not complaining in Time, the Court discharged the Rule which had been made to shew Cause.

Motion to set aside Judgment denied because it came too late.  
*Vid. Smith v. Jenks*, ante, p. 69; and cases there cited.  
*Charlton v. Hankey*, post, p. 95.

*Alfop versus Bagget. Trin. 6 & 7 Geo.*  
 II. 1733. [*Prac. Reg.* 346. *Barnes,*  
 292. *S. C.*]

Notice to appear on Procefs must be for the Effoin-Day. *Vid. Jenner v. Wilkinson, post, p. 97. Green v. Watkins, p. 98. Lloyd v. Bepton and Cort against Turner, p. 100.*

*Cooke.*

**I**N this Cause the Court resolved, that on the Copy of the Procefs which is served upon the Defendant, Notice is to be given to appear on the Effoin-Day, and not on the Appearance-Day.

*Note* ; In this Cause last Term the Court were of Opinion, that the Notice should be for the Appearance-Day, but now reconsidering the Matter, they determined as above.

*Suttle v. Laycon. Mich. 7 G. II. 1733. [93]*  
 [*Prac. Reg.* 449. *S. C.*]

Writ of Inquiry set aside by the Plaintiff, and Costs allowed the Defendant. *Vid. Stanton v. Winch, ante, p. 84.*

**A** MOTION by the Plaintiff to quash his own Writ of Inquiry, which was executed the Day after the Return ; the Defendant insisted upon Costs ; the Court refused to grant any Costs, and quashed the Writ of Inquiry, and gave the Plaintiff Leave to sue out another ; but on a second Motion by the Defendant, setting forth that he had been at great Expence in defending the Writ, the Court ordered Costs to be paid the Defendant.

*Ryder versus Somerfield. Mich. 7 Geo.*  
 II. 1733. [*Prac. Reg.* 230. *S. C.*]

*Thomson.*

Judgment for not paying for Issue though the Plaintiff

**U**PON a Motion to set aside a Judgment signed for not paying for the Issue, the Defendant alledged the Issue was overcharged ; the Court said

that the Defendant was to pay instantly so much as was charged upon the Issue; but if he apprehended the same was too much, he might apply to the Court, and they would order the Plaintiff's Attorney to refund; so they held the Judgment to be regular, but afterwards set aside the same, upon Payment of Costs.

had over-  
charged it.  
*Vid. Harwood*  
*v. Denny, ante,*  
*p. 91. Sed,*  
*vid. Moore v.*  
*Hodgson,*  
*Barnes, 239.*

Bond and another *against* Joep. *Trin.*  
6 & 7 Geo. II. 1733. [*Barnes, 224.*  
S. C.]

*Cooke.*

A RULE was made in *Hilary* Term last, to bring 63*l.* 11*s.* 4*d.* into Court subject to the Taxation of Mr. *Lawrence's* Bill, but the Money was not brought in until the 22*d* of *October* this Term; the Plaintiff in the mean Time proceeded to Judgment, which Judgment was set aside upon Terms, and afterwards a Plea was pleaded, and a Motion, and Leave given to withdraw the same, and Judgment given with stay of Execution till a certain Time, which Time being expired, Execution was sent down; and this Term the Plaintiff moved to set aside the Rule for bringing Money into Court, the Defendant not complying with the Rule in due Time; on hearing Counsel on both Sides, the Court stop'd the Plaintiff's Proceedings, but the Defendant was ordered to pay all Costs to this Time.

Money not  
brought into  
Court pursuant  
to a Rule ob-  
tained for that  
Purpose.

*Note.* The Cause was afterwards compromised by Consent of the Parties.



Kingdom v. Herne and Frost. *Mich.* 7 [94]  
*Geo.* II. 1733. [*Prac. Reg.* 443.  
*Barnes*, 293. *S. C.*]

*Cooke.*

Inquiry set aside  
 for want of  
 Notice to each  
 Defendant.

*Set.* 12 *G. I. c.*  
 29.

5 *G. II. c.* 27,  
*Reg. Cur. Mich.*

1 *Geo.* II. No.  
 1.

**A** MOTION to set aside an Inquiry, because one of the Defendants was not served with Notice of the Execution of the Inquiry, *Per Cur'*; Where the Proceedings are according to the Act 12 *Geo.* I. and no Attorney appears, each Defendant ought to have Notice; so the Inquiry was set aside.

*Note:* In *Skinner* versus *Mannock*, *Mich.* 1736, *Cooke*, the like Case and Resolution.

Walton against Stanton. *Mich.* 7 *Geo.*  
 II. 1733. [*Prac. Reg.* 341. *Barnes*,  
 37. *S. C.*]

*Thomson.*

Judgment by  
 Confession,  
 good, the De-  
 fendant tho' in  
 Custody being  
 an Attorney.  
*Vid. Carter v.*  
*Smith, post*, p.  
 128,

**A** MOTION to set aside a Judgment, because the Warrant of Attorney was given when the Defendant was in Custody, and no Attorney present; a Rule to shew Cause was granted, but on shewing Cause, the same was discharged, it appearing the Defendant himself was an Attorney.

Mountstephen versus Templer.

*Cooke.*

Judgment set  
 aside tho' signed  
 for not paying  
 for the Issue, it

**A** MOTION to set aside a Judgment, which had been signed for want of paying for the Issue; it appeared that the Issue was tendered in

the Country, and not to the Agent in Town; the Court declared those Things should not be transacted in the Country, but by the Agents in Town, neither should Declarations or any other Pleadings be delivered in the Country; and the Judgment was set aside.

being tendered in the Country, *post*, *Adderley v. Dixie*, *post*, p. 101. *Evans v. Flach*, p. 109, *Taylor v. Lawson*, p. 123.

Lazonby *against* Bradley. *Mich. 7 Geo. II. 1733.* [*Prac. Reg.* 289. *Barnes*, 244. *S. C.*]

*Cooke.*

IN this Cause Judgment was signed before the Expiration of eight Days after Declaration delivered to the Attorney, the Defendant living above twenty Miles from *London*; the Court said it was their Intent that the late Rules should extend to Declarations delivered to Attornies, as well as to Declarations filed in the Office *de bene esse*, and Notice thereof delivered to Defendants; and set aside the Judgment.

Judgment signed within eight Days after Declaration delivered to the Attorney. *Reg. Cur' Mic. 3 Geo. II. No. 2, East. 3 G. II. Vid. Godfrey v. Matthews, ante*, p. 85; *Charlton v. Hankey, post*, p. 95, and cases there cited.

[95] *Blaxland v. Burgefs, Widow.* [*Mich. 7 Geo. II. 1733.* [*Prac. Reg.* 301. *Barnes*, 245. *S. C.*]

THE Declaration was filed the 3d of *November*, and Notice thereof and Rule to plead given the same Day, on the 12th the Defendant pleaded a Release with a *Profert in Cur'*; the same Day the Plaintiff demanded Oyer in Writing, and on the 14th in the Afternoon signed Judgment for want of Oyer; the Question was, whether the Plaintiff could

Where a Defendant pleads with a *Profert*, Oyer must be given in a reasonable Time after Demand, or Judgment may be signed.

*Vid. Hammond v. Horner, ante, p. 72; Littlebales v. Smith, p. 73, and cases there cited.*

sign his Judgment on the Defendant's not giving Oyer according to the Demand notwithstanding the Plea? Upon this Point the Court were unanimously of Opinion, that in Case a Defendant pleads with a *Profert*, and Oyer is demanded, and not given in a reasonable Time, the Plaintiff may sign his Judgment, it being esteemed as no Plea till verified by Oyer; and they held the Judgment to be regular.

Charlton *against* Hankey and Alfop.  
*Mich. 7 Geo. II. 1733. [Prac. Reg. 148. Barnes, 245. S. C.]*

*Cooke.*

Judgment good on a Declaration delivered *de bene esse*.  
*Reg. Cur' Mic. 3 Geo. II. No. 1. Vid. Anderson v. Morston, ante, p. 16; Jones v. Merri-den, p. 47; Morje v. Farnham, p. 92, and cases there cited.*

**A** MOTION to set aside a Judgment, because the Plaintiff did not stay four Days for a Plea after the eight Days for Appearance were expired, but signed his Judgment the same Day he entered the Appearance for the Defendant, which was the 9th Day: But it appearing that the Declaration had been delivered *de bene esse*, and that the Rule to plead was out before the Appearance entered, the Court denied the Motion.

*Nota;* By the Statute of 12 Geo. I. cap. 29, s. 1, it is Enacted, *That if such Defendant or Defendants shall not appear at the Return of the Process or within four Days after such Return, it shall be lawful for the Plaintiff upon Affidavit, &c. to enter a common Appearance;* and under this Statute it was the Practice for the Plaintiff's Attorney to enter the Defendant's Appearance the next Day after the Appearance Day.

But by the Statute 5 Geo. II. cap. 27, s. 1, *The Defendant or Defendants (a Copy of the Process in English having been served as by said Act is directed) shall appear at the Return thereof, or within eight Days after such Return.*

[96] Price and another *against* Warren. *Hil.*  
7 Geo. II. 1734.

*Cooke.*

**A** MOTION to put off a Trial, upon the Defendant's Attorney's Affidavit that *T. M.* was a material Witness, and was beyond *York*, and that he could not have him in *London* Time enough to give his Evidence upon the Trial; the Court said the settled Rule is, that the Defendant must make Affidavit himself, without which the Trial is never put off; therefore the Motion was denied.

Motion to put off Trial denied.  
*Vid. Welberry v. Lister, ante, p. 81, and case there cited.*

*Hall versus Bilby. Hil. 7 Geo. II. 1734.*  
[*S. C. reported in Prac. Reg. 345, and Barnes, 404, as Hall v. Whilby or Wilby.*]

**A** MOTION to set aside the Service of Process in a peculiar Franchise, the same not having been served by the proper Officer; whereas the Statute of 5 Geo. II. *cap. 27*, says, *That in peculiar Franchises and Jurisdictions the proper Officer shall execute the Process*; but the Court held that this Process was well served, for the Statute does not make such Service of Process void, nor would an Execution, executed in such Franchise, tho' not by the proper Officer, be void; but the Statute only intended to save the Right to such Officers, who may, if they are injured, take such Remedy as they shall be advised, but such Service is no ways impeached by the Statute.

To set aside Process executed in a Franchise.

*Vid. Dalton's Sheriff, pp. 463, 464.*

**Hartly *versus* Varly.** *Hil. 7 Geo. II.*  
1734. [*Prac. Reg.* 278. *Barnes*, 329.  
*S. C.*]

A Motion for  
Oyer denied,  
the Rule being  
out.

*Vid. Blackland  
v. Burgess, ante,*  
*p. 95, and cases  
there cited.*

*Cooke.*

**A** MOTION for Oyer; but it appearing that  
the Rule to plead was out, the Court denied  
the Motion, for Oyer ought to be demanded before  
the Rule is out.

**Martindale *versus* Galloway.** *Hil. 7 Geo.*  
*II.* 1734. [*Prac. Reg.* 304. *Barnes*,  
330. *S. C.*]

*Cooke.*

To withdraw  
a Plea.  
*Vid. Robinson v.*  
*Simmonds, ante,*  
*p. 67; Sherlock*  
*v. Temple, post,*  
*135, and cases*  
*there cited.*

**M**OTION for Leave to withdraw a Special  
Plea of *Plene Administavit*, and to plead  
(a) *Plene Administavit* generally, which was granted [97]  
on Payment of Costs; but it was said that if the  
Defendant had pleaded the General Issue, they  
would not let him withdraw that, and plead any  
other Plea.

(a) The Defendant might (before any Replication) have  
withdrawn his Special Plea, and pleaded the General Issue  
without Leave.

In *Hetherington v. Mantell*, *Mich. 4 Geo. 3, C. B.* a Motion  
was made to withdraw a Plea of justification in an action  
of Assault and Battery, and to plead it again together with  
the Statute of Limitations. But the Court held that as the  
Statute of Limitations was a bar to the true merits, therefore  
the Plea of Justification should not be permitted to be with-  
drawn, in order to let in the other plea.

In *Cox v. Robt*, 2 *Wils.* 253, the Court refused to permit

a Defendant to add a plea of the Stat. of Limitations, because such a plea shall not be favoured, as it excludes the real merits. A Plea that would further justice might be added, but the Statute of Limitations is not of that nature.

*Pryor v. The Earl of Ilay. Hil. 7 Geo.*  
II. 1734. [*Prac. Reg.* 319. *Barnes,*  
229. S. C.]

*Thomson.*

A DECLARATION upon Promises; the Defendant pleaded double, *Non assumpsit* and *Non assumpsit infra sex Annos*; on the *Non assumpsit* the General Issue was joined, and to the *Non assumpsit infra sex Annos* the Plaintiff replied an Original filed; and thereupon Issue of *Nul tiel Record* was joined; on this last Issue the Plaintiff has Judgment, and an Inquiry was awarded in the Common Form and executed, but no Proceedings were had on the first Issue of *Non assumpsit*, which it was insisted was irregular; for the Record of *Nisi prius* should have been made up, as well to try the Issue as to inquire of Damages, and the Plaintiff cannot enter a *Nolle prosequi* on the *Non assumpsit*, because both the Pleas go to the whole, and both must be determined before the Plaintiff can have Judgment; of which Opinion was the Court, and set aside the Inquiry.

A Writ of Inquiry discharged, being imperfect.

*Jenner versus Williamfon. Hil. 7 Geo.*  
II. 1734. [*Barnes,* 294. S. C.]

*Cooke.*

A MOTION to stay Proceedings for Irregularity because the Process was served with Notice to appear, on the 21<sup>st</sup> of January, which

Proceedings stayed because Process served with Notice to appear the Day after the Re-

turn. *Vid.*  
*Allop v. Bagget*,  
*ante*, p. 92; and  
*cases there cited.*

was on a *Monday*, whereas it should have been on the 20th tho' *Sunday*, that being the real Return-Day, a Rule to shew Cause was granted, and afterwards made absolute upon hearing Counsel on both Sides.

Paul *versus* Gledhill. *Hil.* 7 *Geo.* II.  
1734. [*Prac. Reg.* 444. *Barnes*, 294.  
*S. C.*]

*Thomson.*

A Term's Notice of Inquiry where Judgment is signed above a Year.

*Sed. Vid. Anon. ante*, p. 4; and *cases there cited.*  
*Reg. Cur. Trin.*  
13 *G. II. reg.* 1.

**A** MOTION to set aside a Writ of Inquiry, because executed above a Year after Interlocutory Judgment, and a Term's Notice not given; the Court set aside the Inquiry, because a Term's Notice should have been given; and so in all Cases of Notices where there have not been any Proceedings within a Year, a Term's Notice must be given. [98]

### Senhouse *against* Barnes.

*Cooke.*

The Charges of a Witness allowed to be paid, tho' rejected by the Judge of Assize.

**A** MOTION that the Prothonotary might not allow the Charge of one *Trowell* going from *London* to *Carlisle* to be a Witness, because the Judge would not suffer him to be examined, being of Opinion that his Evidence was not material; but the Plaintiff having sworn that it was material, and the Attorney likewise swearing that he was advised by his Counsel that *Trowell* was a material Witness, the Court ordered the Charge of that Witness to be allowed.

Green *versus* Watkins. Hil. 7 Geo. II.  
1734. [*Prac. Reg.* 347. *Barnes*, 294.  
S. C.]

*Borret.*

A MOTION to stay Proceedings, because the Process which was returnable in *Octab' Hil'*, was served with Notice to appear on the 21<sup>st</sup> of *January*, which was *Monday*; it was insisted upon by the Plaintiff's Counsel, that the *Sunday* being no Law-Day, it was impossible for the Defendant to enter his Appearance on that Day, and therefore it must be understood that the Legislature intended that Notice should be delivered to appear on such a Day, when the Defendant could enter his Appearance; the Court took Time to consider, and soon after declared, that Notice ought to be given to appear on the *Essoin*-Day, whether *Sunday* or not, the Act of Parliament of the Fifth of his present Majesty, c. 27, expressly directing the same, and for that Reason Proceedings were staid.

In Notices to appear, the Day of the Return must be inserted, tho' it happen to be on a *Sunday*. Stat. 5 G. II. cap. 27. *Vid. Allop v. Baggot*, ante, p. 92; and cases there cited.

Roberts *v.* Downes, an Attorney. *East*.  
7 Geo. II. 1734. [*Prac. Reg.* 399.  
*Barnes*, 437. S. C.]

*Borret.*

[99] ON a Motion to put off a Trial, it was declared by the Court, That all Motions for respiting Trials should be made two Days at least before the Day of Trial, and in the present Case, the Motion being made but one Day before the Trial, it was denied.

Motion to respite Trial must be made two Days before Trial. *Vid. Williams v. French*, ante, p. 46. *Agar v. Hill*, post, p. 105. *Sellen v. Chamberlain*, p. 150; and cases there cited.



**Bennet against Sampson.** *East. 7 Geo. II.*  
1734. [*Prac. Reg. 436. Barnes, 407.*  
*S. C.*]

*Cooke.*

Writ quashed  
being tested out  
of Term.

**A** MOTION to quash a *Capias ad respondendum*, because the Writ was tested the 13<sup>th</sup> of February, being no Day in Bank; a Rule *Nisi* was granted, and on shewing Cause the Writ was ordered to be quashed.

**Hannaford against Holman.** *East. 7 Geo.*  
II. 1734. [*Prac. Reg. 134. Barnes,*  
295. *S. C.*]

*Borret.*

To set aside  
an Inquiry for  
want of Cer-  
tainty in the  
Notice. *Vid.*  
*Squire v. Al-*  
*mond, post, p.*  
113; and case  
there cited.

**A** MOTION to set aside a Writ of Inquiry for Incertainty in the Notice; the Notice given was, that the Writ would be executed at a certain Hour (*mentioned in the Notice*) or as soon after as the Sheriff could attend; the Court unanimously agreed that this Notice was irregular for the Incertainty, and granted a Rule to shew Cause, which was afterwards made absolute.

**Right against Wrong, in Ejectment.** *East.*  
7 Geo. II. 1734. [*Barnes, 173. S. C.*]

*Cooke.*

Motion that  
Landlord may  
appear for

**A** MOTION was made in this Cause that the Tenant (who refused to authorise his Landlord to defend for him) might be obliged to make a

Defence, upon the Landlord's giving Security to indemnify him, or that the Landlord might be made a Defendant instead of the Tenant in Possession, in order that the Title might be tried; but the Court refused to grant the Motion, but enlarged the Time for Appearance.

Tenant without Consent, giving Security. *Vid. Webb v. London, ante, p. 73.*

*Arnold against Thomson. East. 7 Geo. II. 1734. [Barnes, 119. S. C.]*

*Borret.*

**I**N Trespas for chasing the Plaintiff's Sheep, whereby ten Ewes and ten Lambs were greatly damaged, a Verdict was found for the Plaintiff, but Damages under 40s. and no Certificate; the Question was, whether the Plaintiff should have full Costs? *Per Cur'*, this is a Damage done to a Personal Chattel, therefore the Plaintiff is intitled to his full Costs.

Full Costs in Trespas for chasing Plaintiff's Sheep. *Vid. Beck v. Nicholls, ante, p. 24; and cases there cited. Lower v. Hobbs, Carthew, p. 224.*

[100] *Lloyd against Beeston. East. 7 Geo. II. 1734. [Barnes, 295. S. C.]*

**P**ROCESS was served on the Defendant with Notice to appear on the *Sunday*, being the *Effoin-Day*, which the Court held good Notice, and discharged the Rule to shew Cause.

Notice to appear on *Sunday* being the Return-day, good. *Vid. Green v. Watkins, ante, p. 98; and case there cited.*

*Cort against Turner.*

*Borret.*

Process served  
without any  
Notice to ap-  
pear, void.  
*Vide Loyd v.*  
*Beefton the pre-*  
*ceding Cafe.*

**T**HE Defendant having been served with a Copy of Process, without any Notice thereunder pursuant to the Act of 5 Geo. II. c. 27, he moved the Court to stay the Proceedings for that Irregularity; and a Rule to shew Cause was granted, which was afterwards made absolute.

*Waddington against Fitch. East. 7 Geo.*  
*II. 1734. [Prac. Reg. 54. Barnes,*  
*64. S. C.]*

*Cooke.*

No Bail Bond  
on an Attach-  
ment out of  
Chancery.  
*Vid. Feild v.*  
*Walford, ante,*  
*p. 14; and cases*  
*there cited.*

**D**EBT on a Sheriff's Bond taken on an Attachment out of Chancery; upon a Demurrer, the Question was, Whether a Sheriff could take such a Bond or not? The Court gave Judgment for the Defendant, and said that a Sheriff cannot take a Bail-Bond upon any Attachment for a Contempt.

N.B. See however *Morris v. Hayward*, 6 Taunt. 569. 2 Marshall, 280, and all the authorities there cited, in which case it was held that a Bail-Bond on an Attachment out of Chancery is untouched by the Stat. 23 Hen. VI. c. 9, and that although a Sheriff is not bound to take Bail in such a case, yet he may recover on a Bail-Bond so taken.

Halfal *against* Wedgwood. *East.* 7 *Geo.*

II. 1734. [*Prac. Reg.* 166. *Barnes*,  
174. *S. C.*]

*Cooke.*

**A** MOTION for Judgment in Ejectment, on the Demise of Lord *Leigh*; it appeared by the Affidavit that the Deponent tendered the Declaration to the Tenant in Possession, but he refused to receive it, and threatened to shoot him; upon which the Deponent, having acquainted the Tenant with the Contents of the Declaration and the Subscription, threw the Declaration on the Ground and left it; and by all the Judges it was held to be a good Service.

Declaration in Ejectment left on the Premises, Tenant refusing to take it and threatening to shoot the person who served it. Held a good Delivery.

[101] *Williams v. Jones, and another.* *East.*  
7 *Geo.* II. 1734. [*Prac. Reg.* 397.  
*Barnes*, 295. *S. C.*]

**A** MOTION made, and a Rule to shew Cause, why a Nonsuit at the Sittings on a Trial by Proviso should not be set aside; it was urged by the Plaintiff that the Defendant could not carry down the Cause by Proviso till a full Term intervened after Issue joined; but the Court said the standing Practice was, to make up the Record by Proviso, upon one Default being made, the next Term after Issue joined, and discharged the Rule to shew Cause.

Nonsuit on Trial by Proviso. *Vid.* *Jesus College v. Vaughan*, ante, p. 63; and cases there cited.

*Note*; It was likewise objected that the Plaintiff was out of Court by suffering a Nonsuit, and so could not now be admitted to move the Court; *Sed vide Swale versus Leaver*, post, p. 124, where this Point is settled otherwise.

Leave to amend  
the *Jurata* by  
making the *Ha*  
*Corp*' returnable  
at a Day  
certain.

*Stat.* 32 *Hen.*  
VIII. c. 30; 18  
*Edm.* c. 14;  
16 & 17 *Car.*  
II. c. 8; 4 & 5  
*Ann.* c. 16; 4  
*Geo.* II. c. 26;  
5 *Geo.* II. c. 27.  
*Child v. Harvey*,  
*Carib.* 506; *La*  
*Marchant v.*  
*Rawson*, Sir *W.*  
*Jones*, 302; *Cro.*  
*Car.* 274, 278;  
*Roll. Ab.* 202.  
(*Tit. Amendment*,  
(D) pl. 7.) S. C.

Walthoe *against* Harrifon an Attorney.  
*Trin.* 7 & 8 *Geo.* II. 1734. [*Prac.*  
*Reg.* 22, *Barnes*, 5.]

*Thomson.*

A MOTION after Trial, to amend the *Jurata* in the Record of *Nisi Prius* by making the Return in the Award of the *Habeas Corpora* a Day certain instead of a general Return; the Court ordered the Plaintiff to shew Cause; afterwards the Rule was discharged, the Court saying that it need not be amended, for it is already good, the same being remedied by the Statutes of *Jeofail*; but on further Consideration the Judges gave their Opinion *seriatim*, and declared that the *Jurata* might be amended by the *Habeas Corpora*, and ordered the same accordingly.

Adderley *against* Dixie. *Trin.* 7 & 8  
*Geo.* II. 1734.

*Cooke.*

Declaration de-  
livered to the  
Attorney in the  
Country, not  
good.

*Vid. Mount-*  
*stephen v. Temp-*  
*ler*, ante, p. 94,  
and cases there  
cited.

A MOTION in the Treasury by Mr. *Eadnal*, Agent for the Defendant's Attorney, for Leave to plead a Tender, on a Declaration delivered in the Country the Day before the *Essoin*-Day of this Term; the Judges were unanimously of Opinion, that a Declaration delivered in the Country [102] to an Attorney appearing for the Defendant was not good, but it should have been delivered to the Agent in Town, and they made a Rule for the Plaintiff to shew Cause why Proceedings on such Declaration should not be stayed, and why he should

not deliver a new Declaration. On the Plaintiffs shewing Cause it was ordered by Consent of the Agents on both Sides, that the Rule should be discharged, and the Defendant should be at Liberty to plead a Tender as of *Easter* Term last.

*Rye against Crossman. Trin. 7 & 8 Geo.*

II. 1734. [*Prac. Reg.* 414. *Barnes*, 475. *S. C.*]

*Cooke.*

**A** MOTION to set aside a Verdict on two Objections: *First*, Because it did not appear by the Copy of the Issue delivered, that the Plaintiff had joined Issue with the Defendant, by putting himself on the Country. And *Secondly*, for a Variance in that Respect between the Issue and the Record of *Nisi prius*, the Record being made right.

Verdict set aside, no Issue being joined by the Plaintiff.

The Court granted a Rule to shew Cause, and afterwards on hearing Counsel on both Sides, the Verdict was set aside, the Defendant having made no Defence on the Trial, he relying upon the above Objections; but by Consent the Cause was directed to be tried the Sitting after Term.

In *Mulloy v. Brown, Trin. 18 Geo. III. Kemp, Serjt.* moved to set aside a Verdict obtained by the Plaintiff on the ground that no Issue had been joined between the parties. The Court decided that no Issue having been joined, the Jury should have been dismissed. *Vid. Heath v. Walker, 2 Stran. 1117.*

Pigott, Widow, *v.* Charlewood. *Trin.*  
7 & 8 *Geo.* II. 1734. [*Prac. Reg.*  
41. *Barnes*, 200.]

*Cooke.*

Attorney's Pri-  
vilege. *Vid.*  
*Garden v. Sheers*,  
*ante*, p. 60; and  
*cases there cited.*

THE Defendant having been taken in Execu-  
tion, while he was attending the Execution of  
a Writ of Inquiry, the Court was moved that he  
might be discharged, which was ordered accordingly  
upon hearing Counsel on both Sides.

Blackhall *against* Gould. *Trin.* 7 & 8  
*Geo.* II. 1734. [*Prac. Reg.* 441.  
*Barnes*, 407. *S. C.*]

Motion to set  
aside Process,  
the Attorney's  
Name not be-  
ing put to it.  
*Vid. Marley v.*  
*Johnson*, *post*, p.  
106.

A MOTION to stay Proceedings because the  
Attorney's Name was not put to the Copy of  
the Process served upon the Defendant, as the A&  
of 2 *Geo.* II. *cap.* 23, *s.* 22, for the better Regula-  
tion of Attornies and Solicitors, required; the Court  
denied the Motion because it did not concern the  
Parties so as to make the Process void, but only the  
Attorney who sued it out, who might be censured  
for not pursuing the Direction of the A&.

[103] *Smith against Wintle. Trin. 7 & 8*  
*Geo. II. 1734. [Prac. Reg. 354.*  
*Barnes, 405. S. C.]*

*Borret.*

**A** MOTION to stay Proceedings, no Writ being regularly served; the Court granted a Rule to shew Cause, and on shewing Cause it appeared by the Plaintiff's Affidavit, that the Defendant absconded and was hard to be met with, and therefore the Plaintiff watched him, and saw him go into a House and shut the Inner Door after him; upon which the Plaintiff followed him, and thrust the Copy of the Writ into the Room after him, which the Court held to be good Service, and discharged the Rule for shewing Cause.

What Service good where Defendant absconded.

*Hill, Esq; against Jefferys, Esq; Trin.*  
*7 & 8 Geo. II. 1734. [Prac. Reg. 411.*  
*Barnes, 438. S. C.]*

*Thomson.*

**A** MOTION for a Trial at Bar, the Action being for Criminal Conversation, the Damages being laid in the Declaration to a large Sum of Money, and a great Number of Witnesses to be examined; the Court granted a Rule to shew Cause; which was afterwards made absolute.

Motion for Trial at Bar in an Action for a Criminal Conversation. The like Motion cited to have been granted in the King's Bench, in the Case of Sir John Germain.



Smith *against* Roe. *Trin.* 7 & 8 Geo.  
II. 1734. [*Prac. Reg.* 2. *Barnes*,  
331. *S. C.*]

*Thompson.*

Plea of Antient  
Demefne ought  
to be pleaded  
within the first  
four Days. *Vid.*  
*Holdfast v. Carl-*  
*ton, ante, p. 43 ;*  
*and case there*  
*cited.*

A MOTION for Leave to plead Antient De-  
mesne, but denied, because such Plea is to the  
Jurisdiction of the Court, and ought to be pleaded  
within the first four Days of the Term after the  
Declaration delivered or left in the Office, as other  
Pleas in Abatement.

Irwin *versus* Goldsmith. *Mich.* 8 Geo.  
II. 1734. [*Prac. Reg.* 247. *S. C.*]

A Motion to  
discharge a  
Quaker's Fine  
for not serving  
on a Jury.

ONE Ingram a Quaker was returned on a Jury,  
and refusing to be sworn was fined 40s. on the  
Stat. 3 Geo. II. *cap.* 25, by the Lord Chief Justice  
*Eyre* ; it was now moved in Court and insisted, that  
by the Statute of 7 & 8 W. III. *cap.* 34, *sec.* 6, a  
Quaker could not serve upon any Jury, and the last  
A& says, if they don't appear, they shall be fined, [104]  
whereas this Quaker did appear and offered to take  
his Affirmation, but that could not be taken, because  
the last A& directs the Jury to be sworn. *Cur' Advi-*  
*sar* ; the Court afterwards delivered their Opinions *se-*  
*riatim* in relation to this Matter, when it was held  
by *Eyre*, Chief Justice, *Denton* and *Reeves*, Justices,  
(Mr. Justice *Fortescue* having some Doubt) that  
Quakers are not exempt by any A& of Parliament

from serving on Juries, and therefore if they will not serve they must be fined; but it was said a Quaker might be excused, by a proper Application to the Sessions, from being named as one of the Jury.

*Gower versus Heath. Trin. 7 & 8 Geo.*  
II. 1734. [*Prac. Reg.* 431. *Barnes*,  
445. *S. C.*]

*Cooke.*

**A**N Action for scandalous Words spoken of the Plaintiff by the Defendant; Issue and Verdict for the Plaintiff, but the Jury having given but 1s. Damage, the Plaintiff now moved for a new Trial; the Court refused to grant a Rule, there being no Precedent of a Verdict being set aside by Reason of the Smallness of Damages, though frequent for excessive Damages.

Motion to set aside his own Verdict for Smallness of Damages.

*Morley against Grub. Trin. 7 & 8 Geo.*  
II. 1734. [*Prac. Reg.* 40. *Barnes*,  
200. *S. C.*]

*Thomson.*

**U**PON a Motion on the Behalf of Mr. *Forrest* to be discharged out of Custody, he having been taken on an Execution as he was returning from Mr. *Thomson's* Office, where he had been attending upon the Taxation of Costs; in this Cause a Rule *Nisi* was granted; but upon shewing Cause it appeared that Mr. *Forrest* had left a Pledge in the Bailiff's Hands. The Court held that he

Attorney arrested, by giving Security, waived his Privilege. *Vid. Garden v. Sheers, ante, p. 60; and cases there cited.*

158 *Cases of Practice in the*

had thereby submitted to the Arrest, and waived any Benefit of his Privilege, and therefore they discharged the Rule which had been made for shewing Cause.

*Swain against Girdler, Serjeant at Law.*  
*Trin. 7 & 8 Geo. II. 1734. [Prac.*  
*Reg. 380. Barnes, 371. S. C.]*

*Borret.*

Whether a Serjeant shall be sued by Bill or Original.

*Vid. Hambleton v. Scroggs, 2 Mod. 296, 2 Lev. 129, 3 Keb. 424, 429, Cro. Car. 84, S. C.; Baker v. Swindon, 1 Ld. Raymond, 399, Holt, 589, 3 Salk, 283, S. C.*

**A**N Action brought by Bill against the Defendant for Work done, the Defendant pleads in Abatement that he ought to be sued by Original, and not by Bill; on this a Demurrer was joined; and after many Arguments and Cases cited, the Court said the Case of a Serjeant and Prothonotary's Clerk are upon the same Foot, neither of them being bound to Personal Attendance, as Prothonotaries [105] and Attornies are, so that he ought to have been sued by Original; and therefore the Court gave Judgment for the Defendant that the Bill should abate.

No Motion to be made for putting off Trial unless made two Days before Day of Trial.  
*Vid. Roberts v. Downes, ante, p. 98; and cases there cited.*

*Agar against Hill. Trin. 7 & 8 Geo. II. 1734.*

*Cooke.*

**A**MOTION to put off a Trial, but denied, because all such Motions are to be made at least two Days before the Day of Trial, and this Motion was made only the Day before.

Adkin *against* Worthington, an Attorney.  
*Trin.* 7 & 8 *Geo.* II. 1734. [*Prac.*  
*Reg.* 35. *Barnes*, 331. *S. C.*]

*Cooke.*

THE Defendant demurred to the Declaration, and for Cause shew'd that the Plaintiff, in setting out the Preamble to the Bill, had not mentioned the Nature of the Action; upon the Argument, the Court declared that the Cause of Action was sufficiently set forth in the Bill, and therefore no Matter if it was omitted in the Preamble; *quod constat clare non opus est verificare*, and therefore gave Judgment for the Plaintiff upon the Demurrer. }

Nature of Action omitted in the Preamble of the Bill, yet good. *Vid. Sidebotham v. Frith*, *post*, p. 130.

Note; In *Darker against Ward*, *Trin.* 1734, *Cooke*, the Court resolved accordingly upon the same point.

Jamet *against* Voyer. *Trin.* 7 & 8 *Geo.* II. 1734. [*Prac.* *Reg.* 355. *Barnes*, 296. *S. C.*]

*Cooke.*

A MOTION to stay Proceedings, the Writ being returnable on a *Sunday*, and a Copy thereof served with Notice to appear upon the *Monday* after, whereas the *Effoin-Day* was on the *Sunday*; the Defendant did not complain to the Court of this Irregularity, till after Notice of a Declaration was served, tho' before Judgment signed, which it was insisted was too late; but the Court said, since he came before Judgment signed, it was

Notice on Process to be for Effoin-day tho' Sunday. *Vid. Allop v. Bagget*, *ante*, p. 92; *Chalken v. Ganson*, *post*, p. 115; and cases there cited. Irregularity in the Notice on

Process may be complained of, any Time before Judgment.

soon enough; for till serving of the Notice of the Declaration he could not tell whether the Plaintiff [106] would proceed upon such irregular Service of the Process; and therefore Proceedings were stayed.

*Vid. Caswall v. Martin, Strange, 1072.*

Cooke and another *against* Sankey.  
*Trin. 7 & 8 Geo. II. 1734. [Prac. Reg. 64. Barnes, 65. S. C.]*

*Borret.*

Bail in Trespass for entering Plaintiff's Ground and taking away his Hop-Poles.

(a) *Stat. 12 G. I. c. 29.*

**A** MOTION for a common Appearance, the Plaintiff's Affidavit set forth, that the Defendant entered the Plaintiff's Hop-Ground, and did take and carry away several Thousands of Hop-Poles, to his Damage 20*l.* The Court said the Act of Parliament (a) did not distinguish Actions, but that the Plaintiff might hold to Bail in Trespass, as well as in any other Action.

Eason and his Wife *against* Wilkins and his Wife. *Trin. 7 & 8 Geo. II. 1734.*

*Cooke.*

Issue amended. *Vid. Walpole v. Robinson, ante, p. 26. Vid. Roll. Abr. 210, (iii. Amendment).*

**A** MOTION made in *Easter* Term last to arrest the Judgment in Assault and Battery; there had been two several Pleas of *Non Assault*, and Issue was joined in the last, but left out in the first. The Court granted a Rule to shew Cause, which was now discharged on hearing the Plaintiff's Counsel, because it appears to be the Clerk's Mistake, and amendable by the Statutes of *Jessail*, and besides, as

the Issue is joined in the latter Plea, that may also have Reference to the First.

*Note;* In *Lyne* against *Green*, the like Resolution in an Action on two Bonds, where Issue was joined as to one Bond and not in the other.

*Morley against Johnson. Trin. 7 & 8  
Geo. II. 1734.*

*Borret.*

A MOTION to stay Proceedings upon Process delivered without the Filazer's Name being put thereto. *Cur'*, the Act of Parliament does not require it, so no Rule was granted.

Process delivered without Filazer's Name. *Vid. Blackhall v. Gould, ante, p. 102. Stat. 2 G. II. c. 23.*

The same point was determined in *Gardiner v. Cumins*, *Mich. 5 Geo. III. C. B.* on the authority of *Morley v. Johnson*, *Naves* for Defendant.

*Camp, qui tam, &c. against Gale. Trin.  
7 & 8 Geo. II. 1734. [Prac. Reg.  
238. Barnes, 247. S. C.]*

*Cooke.*

A MOTION in Arrest of Judgment the last Day of the Term without Notice of the Motion, and a Rule to shew Cause was granted; but the Court said, that no Motion in Arrest of Judgment should hereafter be made, without Notice, on the last Day of the Term.

No Motion in Arrest of Judgment the last Day of the Term without Notice.

*Eglesfield against Anderfon. Trin. 7 & 8  
Geo. II. 1734. [Barnes, 427. S. C.]*

*Cooke.*

A true Copy of  
the Libel ought  
to be produced  
upon Motion  
for a Prohibi-  
tion.

A RULE obtained to shew Cause why a Prohibition should not be granted, but upon shewing Cause it was insisted, that no authentick Copy of the Libel was produced, which the Court said ought to be done, and it must be proved by Affidavit to be a true Copy, and for want of such Affidavit, the Rule was discharged.

*Langdon against Vinicombe and others.  
Trin. 7 & 8 Geo. II. 1734. [Prac.  
Reg. 102. S. C.]*

*Cooke.*

Costs on Ver-  
dict for De-  
fendants, tho'  
some of them  
let Judgment  
go by default.  
*Vid. Porter v.  
Harris, Lev. 63.*

AN ACTION upon the Case on several Promises; some of the Defendants pleaded *Non Assumpsit*, and others let Judgment go by Default; the Defendants, who pleaded had a Verdict. It was moved that the Defendants should have Costs on the Verdict, the Plea going to all the Declaration, the Court ordered Costs to be taxed accordingly on the Verdict.

In *Bridges v. Raymond*, 2 *W. Black*, 800, where the case of *Langdon v. Vinnicombe* was cited, it was held that, where the Plaintiff has a verdict on any one of several Counts, costs should be taxed for him only, according to the practice of the Court of C. P.

In *Norris v. Waldron*, 2 *W. Black*, 1199, the same point was determined.

In *Peterfon v. Bogars*, *Mich. 4 Geo. III. C. P.*, where some of the issues were found for the Defendant, Motion was made

that the Prothonotary might tax the Defendant, his Costs of those issues that were found for him; but the Lord Chief Justice (*Lord Camden*) held that the *Stat. 4 & 5 Ann. c. 16*, which permitted a Defendant to plead several matters and so raise many issues, should not be used to put a Plaintiff in a worse condition as to Costs, and that he was entitled to them as before that Act. *Vid. Greenhow v. Illey, Barnes, 136; Jones v. Davies, Barnes, 140.*

Harding *against* Greensmith, on the  
Demise of Mary Baker, Widow. *Trin.*  
7 & 8 Geo. II. 1734. [*Barnes, 174.*  
*S. C.*]

*Borret.*

**A** MOTION for Judgment in Ejectment, upon Affidavit that the Declaration was delivered to the Wife of *A. B.* and to *B. T.* and to each of them, and swears that both or one of them is Tenant in Possession; the Motion was denied for Incertainty in the Affidavit.

Motion for Judgment in Ejectment denied for Incertainty in the Affidavit.

Note; In *Birbeck against Hughes, Hil. 7 Geo. II. Barnes, 173*, the like Motion denied for Incertainty in the Affidavit, which was *That the Deponent did serve A. B. or C. his Wife.*

[108] Thredder *against* Traviss. *Mich. 8 Geo.*  
*II. 1734.* [*Barnes, 175. S. C.*]

*Cooke.*

**A** MOTION was made the 28th of October this Term, for Judgment in Ejectment on a Proceeding pursuant to the late Act of Parliament, *Stat. 4 Geo. II. c. 28.* The Notice was to appear the Beginning of the then next Term. The Court

Notice to appear the Beginning of next Term, Time to appear enlarged.



said the Beginning of the Term was uncertain, and therefore gave the Tenant till the 6th of *November* to appear and plead.

Hewit *against* Powel. *Mich. 8 Geo. II.*  
1734. [*Barnes, 221. S. C.*]

*Cooke.*

*Ha' Corp'* returnable on a *Sunday*, Commitment the next Day. *Vid. The King v. Hargreaves, post, p. 112.*

**A**N *Habeas Corpus* was sued out to bring the Defendant into Court, returnable in one Month after *S. Michael*, which was on a *Sunday*. The Court said the Defendant might be brought up within four Days after the Return; the next Day the Defendant was committed.

Day's Case, the same Term. *Mich. 8 Geo. II. 1734. [Prac. Reg. 218. S. C.]*

*Cooke.*

Where a Prisoner brought up before the Return of the *Ha' Corp'*; the Court would not receive him.

**W**ILLIAM DAY was brought up the 4th of *November* by *Habeas Corpus*, directed to the Sheriff of the County of *Somerset*, returnable the last Day of the Term; the Court would not receive him before the Return of the Writ.

Carruthers *against* Lamb. *Mich. 8 Geo. II. 1734. [Prac. Reg. 108. Barnes, 120. S. C.]*

*Cooke.*

Costs in *Trespass* for tearing and spoiling the Plaintiff's

**I**N an *Action of Trespass* for an *Assault*, and for tearing and spoiling the Clothes of the Plaintiff with which he was then clothed; a Verdict was

found for the Plaintiff and *id.* Damages, and 40s. Coſts given by the Jury. It was queſtioned by the Prothonotary what Coſts he ſhould allow the Plaintiff, therefore a Motion was made in the Treafury for the Direction of the Court, who all agreed that full Coſts ſhould be allowed, altho' no Certificate was given by the Judge who tried the Cauſe; for it is not an Action of Affault and Battery within the Statute of 22 & 23 *Car. II. c. 9, s. 136*, for the Tearing and Spoiling the Plaintiff's Clothes, which is joined with it, is founded on an Injury to his Property, and the Verdict is general for the Plaintiff.

*Clothes. Vid. Beck v. Nicholls, ante, p. 24; and caſes there cited; Denny v. Wigg, poſt, p. 137.*

[109]

*Evans againſt Flack. Mich. 8 Geo. II.*

1734.

*Cooke.*

**O**N a Motion to ſet aſide a Judgment and a Writ of Inquiry, it was inſiſted that the Matter was tranſacted in the Country againſt the ſettled Practice of the Court; but on hearing Counſel on both Sides, the Court declared, that as this was by Conſent, and as the Matter had proceeded ſo far, they would do nothing in it, and diſcharged the Rule to ſhew Cauſe.

Motion to ſet aſide Judgment and Inquiry, where the Cauſe was tranſacted in the Country, denied. *Vid. Mountſtephen v. Templer, ante, p. 94, and caſes there cited.*

*Marſh verſus Carter. Mich. 8 Geo. II.*

1734. [*Prac. Reg. 37. S. C.*]

*Thomſon.*

**A** MOTION was made to tax the Plaintiff's Bill of Coſts, but denied, the Defendants having given a Bond for the Money.

*Vid. Clarke v. Godfrey, ante, p. 27.*

N.B. In the report of this caſe in *Prac. Reg.* it appears the Bond had been given five years.

*Pool against Broadfield. Mich. 8 Geo. II. 1734. [Prac. Reg. 378. Barnes, 431. S. C.]*

*Thomson.*

*Scire facias*  
qualified with-  
out paying  
Costs. *Vid.*  
*Huer v. White-*  
*head, ante, p.*  
*74, Stat. 8 & 9*  
*W. III. c. 11,*  
*s. 6.*

ON a Motion by the Plaintiff for Leave to quash a *Scire Facias*, the Defendant prayed that Costs might be allowed him, he having entered an Appearance; but he not having pleaded, the Court declared he could have no Costs, and that the Plaintiff may waive his *Scire Facias*, without paying Costs, at any Time before the Defendant has pleaded.

*Jones against Hergest in Ejectment on the Demise of John Thomas. Mich. 8 Geo. II. 1734. [Prac. Reg. 170. Barnes, 175. S. C.]* [110]

*Cooke.*

Motion by  
Defendant to  
set aside Non-  
suit, for not  
confessing  
Lease, Entry  
and Ouster.  
*Vid. Vaughan's*  
*case, ante, p. 63,*  
*and cases there*  
*cited.*

A MOTION by the Defendant to set aside a *Nonsuit*, for not confessing Lease, Entry and Ouster, on account of a Variance between the Issue delivered and the Record of *Nisi prius*. For the Plaintiff it was objected that the Cause was at an End by the *Nonsuit*; the Court said if the Defendant had confessed Lease, Entry and Ouster, that would not have been making a Defence, so as to have hindered him from taking Advantage of the Variance; but as in this Case the Possession would be altered without trying the Title, they set aside the *Nonsuit*, but upon Payment of Costs.

Misfaubin *against* Costa. Mich. 8 Geo.  
II. 1734. [*Prac. Reg.* 238. Barnes,  
312. S. C.]

*Cooke.*

ON the Trial of this Cause the Plaintiff was nonsuited, but died before the Day in Bank, and the Defendant signed his Judgment after the Plaintiff's Death; and now it was moved to set aside this Judgment, suggesting that it was not helped by the Statute of the 18 of Car. II. cap. 8, which enacts, That the Death of either Party, between Verdict and Judgment, shall not be alledged for Error, if Judgment on such Verdict be entered within two Terms after such Verdict; this being a Nonsuit, the Question was, Whether the Act does not extend to Nonsuits as well as Verdicts; the Court declared that this was not an Irregularity, but Error, and to be reversed by Writ of Error only, and therefore denied the Motion.

Motion to set aside a Judgment on a Nonsuit, signed after the Plaintiff's Death. *Vid. Woolridge v. Cloberry, Caribew, p. 149.*

### Cope's Case.

*Cooke.*

ISAAC COPE brought up by *Habeas Corpus*, returnable on the Morrow of St. Martin, at his own Instance, but refusing to pay the Gaoler's Fees, the Court remanded him.

Prisoner remanded for not paying the Gaoler's Fees. *Vid. Mendes v. Woolfe, post, p. 140.*

Gorman *against* Boyle. *Mich.* 8 *Geo.* [III]

II. 1734. [*Prac. Reg.* 388. *Barnes*,  
297. *S. C.*]

*Cooke.*

Fourteen Days  
Notice of Trial,  
the Defendant  
living in *Ireland*.  
*Reg. Cur'* 1654.  
*sec. 21. Vid.*  
*Whitehead v.*  
*Goodyer, ante*,  
p. 72.

**A** MOTION to set aside a Verdict because only eight Days Notice of Trial was given, whereas the Defendant's Habitation is in *Ireland*; the Court said if the Defendant's Habitation be forty Miles from *London*, he must have fourteen Days Notice of Trial, let him live where he will, and therefore set aside the Verdict.

Gray *against* Saunders. *Hil.* 8 *Geo.* II.

1734. [*Prac. Reg.* 131. *Barnes*, 248.  
*S. C.*]

*Borret.*

No Rule to  
plead till Notice  
of the Declara-  
tion.

**T**HE Plaintiff having entered an Appearance for the Defendant according to the late Statute, filed a Declaration against him, and gave a Rule to plead, and some Days after served the Defendant with Notice of the Declaration; the Court held that the Rule was irregular, for it should not have been given till after the Notice was served, the Declaration being well delivered, from the time of Notice only.

*Mathews against* Wheat.

*Cooke.*

After time to  
rejoin Issuably,  
the Party may  
Demur.

**A**FTER Time given to rejoin Issuably, the Party may demur if he will; the Reason of giving Time is, that the Party may consider whether he will demur or not.

[112] *Costar and his Wife against Standen.*  
*Hil. 8 Geo. II. 1734. [Prac. Reg.*  
*423. S. C.]*

*Thomson.*

**A** MOTION to change the Venue, and a Rule granted to shew cause; upon shewing Cause it appeared, that the Defendant had pleaded before he applied to change the Venue; the Rule was discharged for that the Venue is not to be changed after the Defendant has pleaded.

Venue not changed after Plea pleaded. *Vid. Treasure v. Wright, ante, p. 57, and cases there cited.*

*Newman against Butterworth. Hil. 8*  
*Geo. II. 1735. [Prac. Reg. 82.*  
*Barnes, 66. S. C.]*

*Thomson.*

**A** MOTION to stay Proceedings against Bail upon the Recognizance till the Writ of Error be determined; the usual Practice has been, if an Action be brought against the Principal on the Judgment, the Plaintiff may proceed to Judgment, tho' a Writ of Error be depending; but this Case being against Bail, if the Plaintiff should obtain Judgment, the Bail could not render the Principal; and therefore Proceedings were staid.

Proceedings stayed on an Action upon the Recognizance, a Writ of Error being depending. *See vid. Covert v. Allen, ante, p. 24.*

*Note; In Clarke against Baker, Barnes, p. 68, the like Resolution was made.*

The King *against* Haryes. *Hil.* 8 *Geo.*

II. 1735. [*Prac. Reg.* 437. *Barnes*,  
31. *S. C.*]

*Cooke.*

Sheriff to bring  
in the Body on  
an Attachment  
for a Contempt,  
returnable the  
Day before the  
Term. *Vid.*  
*Hewitt v. Powell*,  
*ante*, p. 108.

**A**N Attachment on a Contempt, returnable  
*Wednesday* after the *Octave* of *St. Hilary*,  
which was the Day before the Term.

A Motion in the Treasury for the Sheriff to bring  
in the Body, upon a Return, that he had taken the  
Body; it was insisted that tho' the Return of  
the Attachment was before the first Day of the  
Term, yet the Sheriff shall return his Writ any  
Day within four Days after. The Court made a  
Rule for the Sheriff to bring in the Body. This  
Matter was moved again, and a Rule to shew  
Cause why the Attachment should not be quashed,  
there being no such Return. The Rule enlarged to [113]  
next Term, and then the Writ was quash'd.

*Note*; In *Rooke against Norton*, *Trin.* 10 *Geo.* II. *Cooke*, the  
like Resolution on an Attachment of Privilege.

Hamond *against* Woolmer. *Hil.* 8 *Geo.*

II. 1735. [*Prac. Reg.* 116. *Barnes*,  
28, 120. *S. C.*]

*Thomson.*

Costs taxed  
upon a Rule, to  
be paid to an  
Executor, after  
Defendant's  
Death.

**A**MOTION to set aside Costs of a Nonsuit  
taxed upon a Rule of Court; on a Trial at  
*Nisi prius*, a Verdict was given for the Plaintiff,  
subject to the Opinion of the Lord Chief Justice on  
a Case then made, and if his Opinion should be for

the Defendant, then Defendant was to have the Costs of a Nonsuit. His Lordship's Opinion being for the Defendant, Costs of a Nonsuit were taxed upon the Rule, and after this the Defendant died, and the Costs demanded of the Plaintiff by the Defendant's Executor: It was debated whether an Executor shall be intitled to, and can make a proper Demand of these Costs, it being insisted upon, that that Matter ought to be reciprocal, for if the Plaintiff had died, his Executor would not have been obliged to pay these Costs.

The Court were of a contrary opinion, and said the Executor was intitled to Costs, and granted an Attachment against the Plaintiff for Nonpayment thereof, but ordered the same not to Issue, if the Costs were paid in three Days.

Squire the Elder *against* Almond. *Hil.*  
8 Geo. II. 1735. [*Prac. Reg.* 446.  
*Barnes*, 297. *S. C.*]

*Cooke.*

**A** MOTION to set aside a Writ of Inquiry for the Uncertainty of the Place in the Notice, which was that the Writ would be executed at the Sheriff's Office in *Northampton*, whereas it should have been at such a Place, being the Sheriff's Office, for the Defendant might not know nor be able to find out where the Sheriff's Office was kept, and the Notice likewise expressed that the same would be executed between the Hours of Ten and Two, whereas it should not have exceeded two Hours; the Inquiry for both these Reasons was set aside, but no Costs were ordered to be paid.

Inquiry set aside for want of sufficient Certainty in the Notice. *Vid. Hannaford v. Holman*, ante, p. 99, and case there cited.



Price and Selby *against* Lewis and others. [114]  
*Hil. 8 Geo. II. 1735. [Prac. Reg.*  
*377. S. C.]*

Need not be  
 fifteen Days  
 between the  
 Teste and Re-  
 turn of a *Scire*  
*Facias*. *Vid.*  
*Laycock v.*  
*Aribur, ante, p.*  
*34, Naers v.*  
*Countess of Hunt-*  
*ington, 1 Lut-*  
*wich, 24, Good-*  
*win v. Beakbean,*  
*Carth. 468, Salk.*  
*599. S. C.*

*Cooke.*

**S***CIRE FACIAS* against Bail, Plea in Abatement  
 that there are not fifteen Days between the  
 Teste and Return of each of the *Scire Facias*'s;  
 on Demurrer Judgment for the Plaintiff, that the  
 Defendants answer over, for there need not be fifteen  
 Days between the Teste and Return of each of the  
*Scire Facias*'s, but only fifteen Days between the  
 Teste of the first *Scire Facias* and the Return of the  
 second *Scire Facias*.

Strickland, Bart., *against* Hodgson. *Hil.*  
*8 Geo. II. 1735. [Prac. Reg. 329.*  
*Barnes, 372. S. C.]*

*Cooke.*

Declaration  
 against a  
 Prisoner in a  
 County Gaol,  
 need not be  
 filed before the  
 Delivery.

**A***MOTION* to stay Proceedings upon a Decla-  
 ration delivered to a Prisoner in a County  
 Gaol, because such Declaration was not first entered  
 in the Prothonotary's Office, and on hearing Counsel  
 on both Sides, the Court said there was neither Act  
 of Parliament, nor Rule of Court, that did oblige  
 the Filing such Declaration before the Delivery  
 thereof to the Prisoner, but that it was sufficient to  
 file such Declaration in the Office any Time before  
 the giving a Rule to appear and plead.

*Stat. 4 & 5*  
*W. & M. cap.*  
*21.*

*Note*; The Entering the Declaration with the Prothonotary,  
 is only necessary where the Prisoner is in the *Fleet*.

Peirson *against* Ives. *Hil.* 8 *Geo.* II.  
1735. [*Barnes*, 332. S. C.]

*Cooke.*

A MOTION for Leave to add the general Issue to a Plea of *Non assumpsit infra sex annos*, and this moved after a Demurrer to the Plea.

The Court discharged the Rule to shew Cause, for they said a Defendant cannot add to his Plea after a Replication or Demurrer.

Can't add to a Plea after Replication or Demurrer.

*Vid. Long v. Lingwood, Prac. Reg.* 317. S. P.

[115] Roe *against* Doe. *Hil.* 8 *Geo.* II. 1735.  
[*Barnes*, 176. S. C.]

IN Ejectment, a Motion for Judgment, the Tenant acknowledged he received the Declaration from his Father, and held by the Court a good Delivery, and Rule for Judgment ordered.

*Note*; *Snape against Hunt, Hil.* 8 *Geo.* II. The like Resolution on a Delivery to the Daughter, and the Tenant's confessing the Receipt of it.

Good Service of a Declaration delivered to the Tenant's Father, Tenant acknowledging the Receipt.

*Vid. Kirwood v. Backhouse, ante*, p. 75.

Chalken *against* Janfon. *East.* 8 *Geo.* II.  
1735. [*Barnes*, 298. S. C.]

*Cooke.*

A COPY of Procefs served with Notice to appear at the Return, being the 23<sup>rd</sup> of *October*, whereas the same should have been the Return-Day, which was the *Sunday* before; upon a Motion to stay the Proceedings, the Court granted a Rule to shew Cause. In *Easter* Term following,

Procefs with Notice to appear on the Appearance-Day. *Vid.*

*James v. Voyer, ante*, p. 105; and *cases there cited*.

the Rule was discharged, upon hearing Counsel on both Sides, the Defendant being too late in making Application, for he did not complain to the Court till after Judgment signed.

Freeman and his Wife *against* Cannon and others. *East.* 8 *Geo.* II. 1735. [*Prac. Reg.* 160. *Barnes*, 1. *S. C.*]

Motion to set aside the *Grand Cape*, for want of sufficient Summons.

**I**N Dower upon a Motion to set aside a *Grand Cape*, because the Summons was not proclaimed fourteen Days before the Return, according to the Statute 31 *Eliz. cap.* 3, *sec.* 2.

The Court ordered a Rule to shew Cause ; and no Defence being made, the Rule was made absolute on Affidavit of Service.

Noble *against* Lancaster. *East.* 8 *Geo.* [116] II. 1735. [*Prac. Reg.* 374. *Barnes*, 125. *S. C.*]

What Costs on an Inquiry after Trial, and a Repleader had been ordered.

**I**N Trover, *Non assumpsit*, Issue thereon, and a Verdict for the Plaintiff pleaded, but the Issue being immaterial, Judgment was set aside, a Repleader ordered, and for want of a Plea, interlocutory Judgment was signed, and a Writ of Inquiry executed ; and now the Question was, if the Costs of the Trial should be allowed in the Taxation ; the Court directed that such Costs should not be allowed, for that in this Case there were Faults on both Sides.

*Danes against Monfay.*

*Thomson.*

**A** MOTION for an Attachment for not performing an Umpirage, and granted *Nisi*. It is settled that Arbitrators cannot proceed on a Reference, after they have once named an Umpire, for then their Authority ceases, tho' the Time for making their award is not expired.

Arbitrators  
can't proceed  
after they have  
named an  
Umpire. *Stat.*  
*9 & 10 W. III.*  
*c. 15.*

*Jones versus Wilkinfon. East. 8 Geo.*  
II. 1735. [*Barnes, 249. S. C.*]

*Thomson.*

**U**PON a Motion to set aside an Interlocutory Judgment, on the Defendant's Attorney's Affidavit, that he was not called on for a Plea, a Rule to shew Cause was granted. On shewing Cause, it appeared that the Defendant's Appearance was entered by the Plaintiff, pursuant to the Statute, and that Notice of a Declaration being filed, had been delivered to the Defendant; the Court declared that in this Case the Plaintiff was not obliged to take Notice of any Attorney that should afterwards appear to be concerned, and held the Judgment to be regularly signed.

Judgment held  
good tho' the  
Defendant's  
Attorney was  
not called on  
for a Plea.  
*Vid. Morris v.*  
*Parry, ante, p.*  
*50.*

**Blik against Halpenn and his Wife. East. [117]**  
 8 Geo. II. 1735. [*Prac. Reg.* 65.  
*Barnes, 67. S. C.*]

*Borret.*

In an action against *Bares* and *Feme*, if the Wife only be arrested, she shall be discharged on a Common Appearance. *Vid. Griffith v. Berney, ante, p. 52, Rolt's Abr. 583 (H) pl. 8. 1 Sid. 395. In B. R. Clarkson v. Watkinson and Wife, Trin. 9 Geo. I.*

**A** MOTION in the Treasury to discharge the Defendant's Wife, taken on Mesne Process without her Husband.

*Curia*: She shall be discharged on a Common Appearance, for otherwise it might be in the Power of a Husband to set up sham Actions against his Wife and keep her in continual Imprisonment; but in case both Husband and Wife had been taken, then both should be held till Bail be given for both, for otherwise a Woman might marry a Prisoner, and thereby might defraud her Creditors.

*Note*: The Law seems now to be settled, that if Husband and Wife are taken on mesne process, she shall be Discharged; so, if she is arrested alone; otherwise a Husband may contrive to imprison his Wife; so where she is taken in Execution for Costs, being improperly made a Plaintiff with her Husband; but if both are Arrested for a Debt of hers, *dum sola*, he must at least put in Bail for both, otherwise, a Woman by Marrying a Prisoner may cheat all her Creditors. But if both are in Custody in Execution, she cannot be Discharged. This Distinction between mesne process and Execution was fully settled by *Wilmot Ch. J.* in the Case of *Roberts v. Andrews C.B. Trin. 10 Geo. III. vid. 3 Wils. 124, 2 W. Black, 720. S. C. Goodtitle on Dem. Gardiner v. Mary Gardiner and Franklin, Mich. 18 Geo. III.*

Cowper *against* Sayer. *East. 8 Geo. II.*  
1735. [*Prac. Reg. 42. S. C.*]

*Cooke.*

**A** MOTION for an Attachment, and Rule *Nisi*,  
against *Hodgson* an Attorney, for commencing  
a Suit in his own Name after he was forejudged;  
on shewing Cause the Rule was made absolute, and  
an Attachment granted against him.

An Attachment  
against an  
Attorney for  
bringing an  
Action in his  
own Name  
after he was  
forejudged.  
*Vid. The King*  
*v. Hodgson, post,*  
*p. 121.*

Maddox *against* Paston. *East. 8 Geo. II.*  
1735.

*Cooke.*

**S**IX Pounds brought into Court on the common  
Rule, and the Plaintiff recovered but five  
Pounds; by the Words of the Rule, the Plaintiff  
was to have the Money out of Court; but the  
Defendant moved to have the six Pounds paid in  
Part of his own Costs, and granted.

Money paid  
into Court re-  
turned to De-  
fendant in Part  
of his Costs.  
*Vid. Anon. ante,*  
*p. 5; and cases*  
*there cited.*

Tomlinson *against* White. *East. 8 Geo.*  
*II. 1735.* [*Prac. Reg. 109. Barnes,*  
*121. S. C.*]

*Cooke.*

[118] **I**N Trespass *Quare clausum fregit*, and for break-  
ing a Door, the Plaintiff had laid Special  
Damages in his Declaration; the Jury found the  
Special Matter for the Defendant, and the Rest for  
the Plaintiff, and Damages five Shillings; and now  
the Defendant moved that no more Costs than

No more Costs  
than Damages  
in Trespass.  
*Vid. Beck v.*  
*Nicholls, and*  
*Rosier v. Bolting,*  
*ante, p. 24; and*  
*cases there cited;*  
*and Denny v.*  
*Wigg, post, p.*  
*137.*

Damages should be allowed, and a Rule *Nisi* was granted, which was afterwards made absolute, upon hearing Counsel on both Sides, because the special Matter being found for the Defendant, the Rest was a Trespass against the Plaintiff's Freehold, the Title of which might have come in Question; and therefore it was requisite that the Judge should have certified in Order to intitle the Plaintiff to full Costs.

Smith *against* Hayward. *East.* 8 Geo. II. 1735. [*Prac. Reg.* 382, 415. *Barnes*, 480. S. C.]

*Borret.*

Two Sets of Words, Part not Actionable, Verdict set aside. *Reg. Cur. Mich.* 1654, *sec.* 24.

**A**N ACTION for Words, *viz.* *He*, meaning the Plaintiff, hath committed Sodomy upon my Child, and other Words, *this Child can hang you*; a general Verdict and 100*l.* Damages.

On a Motion in Arrest of Judgment, the Verdict being General, and the last Words not actionable, the Court set aside the Verdict, and ordered a *Venire facias de novo*.

Clarke *against* Taylor. *East.* 8 Geo. II. 1735. [*Prac. Reg.* 38. *Barnes*, 124. S. C.]

*Cooke.*

Attorney's Bill not to be taxed after Inquiry executed.

**T**HE Court being moved to tax the Plaintiff's Bill of Costs, a Rule *Nisi* was granted, but upon shewing Cause it appeared that an Action had

been depending some Time, and a Writ of Inquiry executed, therefore the Court discharged the Rule, declaring that the Defendant came too late, after an Inquiry executed, and the Damages ascertained.

*Note;* The Court seemed of Opinion that it would be too late to apply for taxing a Bill of Costs after Judgment signed, but that not being the Case before them, no absolute Determination was given as to that Point.

*Williams against Evan Jones and Edward Jones. East. 8 Geo. II. 1735. [Barnes, 6. S. C.]*

*Cooke.*

**A** VERDICT for the Plaintiff generally; Lord Chief Justice certified, that the Defendant *Edward Jones* was found Not guilty, but that the Associate had by Mistake taken a Verdict against both; ordered the Return of the *Postea* to be [119] amended, by indorsing on the *Postea*, that *Edward Jones* is not Guilty.

*Postea* amended by the Judges' Certificate.

*Grimston against Grimston, on the Demise of Lord Gower, and another.*

*Borret.*

**S**IX Declarations in Ejectment, delivered to six Tenants, one Appearance and one Plea for all jointly, six several Issues delivered and paid for; Motion to put them into one, all the Declarations being alike. Mr. Justice *Denton* ordered it to be so; the Plaintiff dissatisfied with the Order moved

Six Issues in Ejectment put into one.



the Court, but the Court confirmed the Judge's Order, the constant Practice being to make but one Cause.

Stratford *versus* Marshall. *East. 8 Geo. II. 1735.* [*Prac. Reg. 399. Barnes, 440. S. C.*]

*Borret.*

Trial put off from *Easter* to *Michaelmas*.  
*Vid. Williams v. French, ante, p. 45.*

A MOTION to put off a Trial till *Michaelmas* Term next, and granted after a Rule to shew Cause, tho' it was declared the common Practice was only to put off Trials from one Term to another.

Ward *against* Colclough. *Trin. 8 & 9 Geo. II. 1735.* [*Prac. Reg. 417. Barnes, 480. S. C.*]

*Cooke.*

Venue not changed on a Bill of Exchange or promissory Note.  
*Vid. Watson v. Lewis, post, p. 152.*

THE Court denied Leave to change the Venue on a Bill of Exchange or promissory Note, for these are in the Nature of Specialties.

*Note;* In *Viggers v. Viggers, Trin. 10 Geo. II. Cooke;* The Court made the like Resolution, and so it was said to be ruled in the King's Bench.

Byer *against* Whitaker and others. *Trin.*  
8 & 9 *Geo. II.* 1735. [*Prac. Reg.*  
344. *Barnes*, 406. *S. C.*]

*Thomson.*

[120] IN this Cause a Motion was made in *Easter Term* 1735, to stay Proceedings on a *Testatum Capias*, a Copy of which had been served on the Defendant in the County Palatine of *Lancaster*, without taking out of a Mandate thereon from the Chancellor of the County Palatine, and a Rule to shew Cause being granted, the Matter now came on to be debated; and Counsel being heard on both Sides, the Court held that the Process was well served, and pursuant to the Statute of 5 *Geo. II. cap.* 27, and therefore the Rule to shew Cause was discharged.

Process of the  
Common Pleas  
served in the  
County Palatine  
of *Lancaster*.  
*Vid. Beach v.*  
*Smith, ante*, p.  
38.

Goodright *against* Hoblyn. *Mich.* 8 & 9  
*Geo. II.* 1735. [*Prac. Reg.* 393.  
*Barnes*, 298. *S. C.*]

*Borret.*

IN Ejectment, a Motion for Costs for not going on to Trial, a Countermand was given in the Country; but it was objected, that such Countermand was not good, for that it ought to have been given in Town. The Court declared that all Notices of Trial must be given in Town, but Countermands may be given either in Town or Country.

Countermand  
of Trial may  
be given either  
in Town or  
Country. *Vid.*  
*Gerry v. Skil-*  
*ston, ante*, p. 48.

*Tomkin against Perry. Trin. 8 & 9  
Geo. II. 1735. [Prac. Reg. 5. S. C.]*

*Cooke.*

Plea in Abatement without Affidavit of the Truth of the Plea. *Vid. Delesfontayne v. Myngs, ante, p. 38; and case cited.*

**A** PLEA in Abatement, viz. That there is no Addition of Estate, Degree or Mystery to the Defendant's Name, was pleaded after a special Impar lance, but no Affidavit made of the Truth of such Plea, and for want thereof Judgment signed; and now upon Motion to set aside the Judgment, it was insisted that there is no Occasion for an Affidavit, because the Truth of the Plea appears by the Declaration; but afterwards the Parties consenting that the Judgment should be set aside, upon the Defendant's pleading an issuable Plea to the Action, and taking short Notice of Trial, and also that the Costs of each Side should attend the Event of the Suit, no direct Opinion was given by the Court in the principal Point.

*Cotton against Perks, Widow. Trin. 8  
& 9 Geo. II. 1735. [Prac. Reg. 258. S. C.]*

*Thomson.*

Money tendered and refused, yet Defendant to pay the Costs, Plaintiff not refusing to attend and take his Costs.

**A** RULE obtained for Payment of five Pounds into Court; the Money had been tendered, but was refused, and on that Refusal brought into Court, and Costs taxed; the Defendant insisted that [121] no Costs ought to be paid, the Plaintiff having refused the Money. The Counsel for the Defendant insisted, that the refusing the Money, when tendered had put the Defendant to the Charge of paying it into Court and pleading, therefore the Plaintiff

ought to pay Costs from the Time of the Refusal ; but the Court over-ruled this, for tho' the Defendant tendered the Money, she could not tender the Costs before they were taxed.

Foster *Plaintiff*, Pollington and his Wife  
and others, *Deforceants*. [*Barnes*,  
216. S. C.]

*Borret.*

**I**T was moved to amend a Fine by striking out the Words *in America in partibus Transmarinis* ; this Fine was of Lands and Tenements in the Island of *Antigoa*, otherwise *Antigua* in *Paroch' Stæ. Mariæ, Islington, in the County of Middlesex*, and was past in the Year 1714. Application had been made to the Master of the Rolls, and an Order made by his Honour for the Amendment, which Order was set aside by my Lord Chancellor. After great Debate in this Cause (a Writ of Error being depending) the Judges were unanimously of Opinion that this Court had the only Cognizance of Fines, and ordered the same to be amended.

A Fine amended by striking out superfluous Words. *Vid. Laming v. Bestland, ante, p. 17 ; and cases there cited.*

The King *against* Hodgson. *Trin.* 8 &  
9 *Geo. II.* 1735. [*Prac. Reg.* 43.  
S. C.]

*Cooke.*

**A** RECOGNIZANCE to answer Interrogatories on a Contempt, and Interrogatories filed ; but the Defendant before his Examination applied to the Court to be discharged, on Payment of the Costs of the Complainant only, which was

Defendant discharged of a Contempt on submitting to pay the Costs of the Com-

plainant. *Vid.*  
*Cowper v. Sa-*  
*yer, ante, p. 117.*

granted, and the Recognizance discharged; in the Original Cause a Writ of Error being depending, the Complaint against the Defendant was for practising in his own Name as an Attorney, being forejudged the Court.

Coates and others *against* Smith and [122]  
Midgley.

*Cooke.*

Leave to plead  
double in Pro-  
hibition.

**I**N Prohibition, a Motion to plead double, *viz.* *That J. C. &c. named in the Declaration at a Meeting &c., did not make up a true and just Account, &c. And that the Account mentioned in the Declaration, was not examined, approved and allowed by the Vestry; which was granted upon hearing Counsel on both Sides.*

Taylor *against* Sharman. *Trin. 8 & 9*  
*Geo. II. 1735. [Barnes, 299. S. C.]*

*Cooke.*

Judgment set  
aside for want  
of sufficient  
Notice of the  
Declaration.  
*Vid. Parsons v.*  
*Smith, ante, p.*  
*63; and cases*  
*there cited.*

**A** MOTION to set aside a Judgment for want of sufficient Notice of the Declaration, the Notice was *a Declaration is left against you in the Office, &c. for 15l. due by Note under your Hand,* without saying whether in Debt or Case, for an Action of Debt might be maintained on such a Note, so that the Nature of the Action did not appear; and for that Reason the Judgment was set aside upon hearing Counsel on both Sides.

Tidmarsh *against* Procter. Mich. 9 Geo.  
II. 1735. [*Prac. Reg.* 336. Barnes,  
373. S. C.]

*Cooke.*

**A** MOTION by a Prisoner for his Discharge, the Payment of 2s. 4d. per Week being discontinued on the Plaintiff's Death; the Act of Parliament does not make any Provision where the Plaintiff dies, so it is *Casus omisus*; however the Court made a Rule for the Plaintiff's Executor to shew Cause why the Defendant should not be discharged; and no Cause being shewn, the Court on Affidavit of Service made the Rule absolute for the Defendant's Discharge.

Motion to discharge a Prisoner, because the 2s. 4d. was not continued after Plaintiff's Death.

[123] Knight *against* Winter. Mich. 9 Geo. II.  
1735. [*Barnes*, 68. S. C.]

*Thomson.*

**M**OTION to set aside Execution against the Bail; it appeared that the Defendant was rendered, and the same entered in the Judge's Book, but not in the Bail-Piece as usual, the same having been taken away by the Plaintiff's Attorney, so that the Render could not be entered thereon; the Court held the Render to be good, and ordered the Executions to be set aside with Costs.

A Reddit entered in the Judge's Book, good. *Vid. Vandereyk v. Waylet*, ante, p. 53; and cases there cited. *Ling v. Woodger*, post, p. 129.

Arne *against* Neeler. *Mich. 9 Geo. II.*  
1735. [*Barnes, 30. S. C.*]

*Cooke.*

Attachment  
against the  
Sheriff, on a  
Rule served  
upon Affidavit  
of Notice on  
one who was  
not Under  
Sheriff, but  
acted as such.  
*Vid. Franklin*  
*v. Nash, ante,*  
*p. 87.*

**A** MOTION for an Attachment against the Under Sheriff of *Middlesex*, for not returning a *Capias* upon a peremptory Rule for that Purpose, the Affidavit of Notice was to Mr. *Benson*, who acts, and for many years last past has acted as Under Sheriff; it was objected that by the Affidavit Mr. *Benson* appears to be only an acting Under Sheriff, and not the real Under Sheriff, and that Personal Notice ought to be given to the Real Under Sheriff; the Court granted an Attachment against the Sheriff, and said Mr. *Benson* was well known to be the acting Under Sheriff.

Taylor *versus* Lawfon. *Mich. 9 Geo. II.*  
1735. [*Prac. Reg. 125. 281. Barnes,*  
*251. S. C.*]

*Borret.*

Plea delivered  
in the Country.  
*Vid. Mount-*  
*Stephen v. Tem-*  
*pler, ante, p. 94;*  
*and cases there*  
*cited.*

**A** PLEA was delivered in the Country, and afterwards Judgment signed for want of a Plea, which the Court held to be regular, however they set aside the same on the Defendant's pleading, and consenting that the Costs should attend the Event of the Trial.

[124] *Phillips against Fowler. Mich. 9 Geo. II. 1735. [Prac. Reg. 409. Barnes, 441. S. C.]*

*Cooke.*

UPON a Motion to set aside a Verdict for a Misbehaviour of the Jury, it was objected that the Defendant had already moved in Arrest of Judgment, and after this could not be admitted to move to set aside the Verdict; but the Court over-ruled this Objection, because the Fact of the Jury's Misbehaviour came lately to Knowledge, and granted a Rule to shew Cause; and the Defendant's Counsel cited many Cases, where Motions had been made to set aside Verdicts after Motion in Arrest of Judgment.

Motion to set aside a Verdict for a Misbehaviour of the Jury.

*Craven against Aislaby. Mich. 9 Geo. II. 1735. [Prac. Reg. 294. Barnes, 251. S. C.]*

*Thomson.*

IN this Cause Judgment had been signed too soon, and it being by Mistake, the Prothonotary struck the same out of his Book; it was said that this had been often done, and held good.

Judgment signed by Mistake, waived without Motion.

*Elwood against Elwood.*

*Cooke.*

A QUAKER'S Affirmation of the Execution of an Award, or any other Thing relating to a Motion for an Attachment, is not to be received or read.

Attachment not grantable on a Quaker's Affirmation.



Swale an Attorney against Leaver. *Mich.*  
 9 Geo. II. 1735. [*Prac. Reg.* 388.  
*Barnes*, 299. *S. C.*]

*Thomson.*

Nonfuit at the  
 Sittings set  
 aside, for want  
 of fourteen  
 Days Notice  
 of Trial by  
 Proviso. *Vid.*  
*Vaughan's case*,  
*ante*, p. 63; and  
*cases there cited.*  
*Regula Cur'*  
*Mich.* 1654.  
*sec.* 21.

**A** MOTION to set aside a Nonfuit obtained at the Sittings for *Middlesex*, upon a Record by Proviso for want of fourteen Days Notice of Trial; it was insisted for the Plaintiff, that tho' he was an Attorney, and lived in Town, and supposed to be present in Court, yet the Defendant living above forty Miles from *London*, each Party ought to have fourteen Days Notice of Trial; the Defendant objected that the Plaintiff having suffered a Nonfuit, [125] was out of Court, and could not now be heard, but the Court over-ruled the Objections, for here the Question is about the Regularity of the Nonfuit, and if that Objection should be allowed, it would be *Exceptio ejusdem rei cujus petitur Dissolutio*; and they likewise held, that as the Plaintiff must have been obliged to give the Defendant fourteen Days Notice, so likewise the Plaintiff ought to have had the same Notice, and set aside the Nonfuit.

Bray against Booth. *Mich.* 9 Geo. II.  
 1735. [*Prac. Reg.* 239. *Barnes*, 252.  
*S. C.*]

*Borret.*

Judgment held  
 good, tho'  
 signed after a  
 Non Pros.

**N**ON Pros signed for want of a Replication to a Plea of Tender where the Money was not brought into Court, afterwards Judgment signed for want of a Plea. Upon Motion to set aside the

Judgment, it was objected that the *Non pros* was good till set aside, and therefore Judgment irregular, but the Court over-ruled that Objection, and said the *Non pros* was irregular, and therefore of it's self void. Upon this Motion the Prothonotaries Mr. *Thomson* and Mr. *Borret* both affirmed that the Judgment was good, and that the *Non pros* being irregular, there was no occasion to move the Court to set it aside.

*Austin against King and his Wife. Hil.*  
9 *Geo. II.* 1736. [*Prac. Reg.* 337.  
*S. C.*]

THE Defendants were brought into Court in order to be discharged; the Question was, Whether the Husband and his Wife should be allowed 2s. 4d. a Week each, or whether, there being but one Judgment, one 2s. 4d. should not be sufficient. The Court were of Opinion that the Act of Parliament extended to the Person, and not to the Cause, and therefore ordered 2s. 4d. per Week to each.

A Man and his Wife Prisoners, allowed 2s. 4d. each a week, tho' but one Judgment.

*Ware against Rackett. Hil. 9 Geo. II.*  
1736. [*Barnes*, 30. *S. C.*]

*Cooke.*

THE Court was moved for an Attachment against the Plaintiff, upon the Defendant's Affidavit, that he was arrested and held to Bail, no [126] Affidavit being filed of the Debt, and a Rule to shew Cause was granted; on hearing Counsel on

Arrest, Affidavit not filed.

both sides, it appeared that Affidavit had been made, but by Mistake was not filed; the Court therefore discharged the Rule for an Attachment, but ordered the Plaintiff to pay Costs, the Defendant consenting not to bring any Action.

*Note*; Where in an Affidavit to hold to Bail, the words were "Defendant *is* justly indebted," instead of *is*, it was argued on a Rule that the Court would admit another correct Affidavit, in the shape of a Supplementary Affidavit, but the Court refused to do so.

### Bridger *against* Coleby.

*Cooke.*

On a Rescous returned, an Attachment issues without Motion. *Vid. The King v. Philips, ante, p. 88; and case there cited.*

UPON a Motion for an Attachment upon a Rescous returned, a Rule to shew Cause was granted; but the Court afterwards discharged the Rule, and said it was the standing Practice, that in all Cases where a Rescous is returned by the Sheriff, a *Capias pro Rescussu*, which is in the Nature of an Attachment, issues of Course.

*Vid. Highway v. Darby, 2 Vent. 175.*

Albany *against* Griffin and his Wife. *Hil. 9 Geo. II. 1736. [Prac. Reg. 306. S. C.]*

*Thomson.*

Plea must be delivered at length, and not shortly, as *Not guilty* only.

ON a Plece of Stampd Paper the Defendants *say they are Not guilty*, without delivering the Plea at length; the Plaintiff signed Judgment for want of a Plea. The Court said it was no Defence, so the Judgment was held regular.

In *Carew against Minifie*, *Hil. 9 Geo. II. Cooke*, the same Rule.

Ball *against* Young. *Hil.* 9 *Geo.* II. 1736.  
[*Prac. Reg.* 425. S. C.]

*Cooke.*

A MOTION to change the Venue, and Rule to shew Cause granted; on shewing Cause it appeared that, after the Rule to plead was out, the Defendant applied to a Judge for Time to plead, and pending the Summons, moved to change the Venue. *Per Cur'*, he should have applied to change the Venue sooner, the Rule must be discharged.

Venue not to be changed after a Summons for Time to plead. *Ante*, p. 33. *Vid.* *Coffar v. Standen*, *ante*, p. 112; and cases there cited.

Sheppard *Demandant*, Harris *Tenant*, Dewey Widow, and others *Vouchees*. *Hil.* 9 *Geo.* II. 1736.

*Thomson.*

[127] A RULE to complete a Recovery of *Easter* Term the 9th of Queen *Anne*; the Precipe at Bar was signed by Serjeant *Richardson*, the Plea-Roll entered, and the Exemplification ingrossed, but not sealed, and neither the Roll carried in, or the Writs filed; upon reading the Deeds and Affidavit of Notice to the respective Parties, the Recovery was ordered to be compleated, and the Rolls and Writs to be filed.

Recovery compleated tho' no Exemplification or Writs. *Vid.* *Foster v. Pollington*, *ante*, p. 121; and cases there cited.

*Clapham v. Bacon*, *Trin.* 2 *Car.* I. A Recovery agreed to be suffered by *A. B.* and *Richard C.* the Writ of Entry was sued out in the Name of *John C.* instead of *Richard*, but ordered to be amended.

*Mich. 4 Car. I.* A Warrant to suffer a Recovery by *W. Reynolds and Hester his Wife*; the Serjeant had certified that the Warrant was given by *W. R. and Margaret his Wife*, the Mittitur and Transcript made and the Recovery entered accordingly, but ordered to be amended.

*Thurban v. Pantry, Mich. 8 Car. I.* A Recovery suffered by *A. B. and C. his Wife*, but the Name of the Wife totally omitted, ordered by the Court to be amended.

*Doncaster v. Champion, East. 16 Car. 1.* A Recovery was suffered, but the Writ of *Seisin* was made returnable the same Return as the Writ of Entry. The Return ordered to be amended.

*Bunce & al. v. Greenway & al., Mich. 4 W. & M.* The Writ of Entry was made returnable *Tres Mich. 33 Car. II.* which was before the Date of the Deed, to make a Tenant to the Precipe: And ordered to be amended by making the Writ returnable *Craſtin' Animarum*.

*Wattry v. Jodrell, Mich. 5 W. & M. and Workhouse v. Watts, Mich. 5 W. & M.* The like Amendments were order'd to be made.

Recovery  
ordered to be  
entered of Re-  
cord above 60  
Years after it  
was taken at  
Bar.

*Ives & al., Demandants, v. Young, Tenant, Frampton Vouchee, Trin. 12 W. III. Tempeſt.* Upon the Certificates of the *Cuſtos Brevium*, Mr. Prothonotary *Tempeſt*, and the Clerk of the Warrants of this Court, that the Writ of Entry and Writ of *Seisin* between the Parties had been duly iſſued, and

also that the Recovery in this Cause was taken at the Bar of this Court of the Term of St. *Michael* in the eighth Year of King *Charles* the First, all the Parties in the said Recovery named then and there appearing in their own Persons, It was ordered that the said Recovery should be entered of Record of that same Term of St. *Michael*, upon the 134<sup>th</sup> Roll among the Rolls of the Pleas of Land inrolled in that Term.

[128] Mackdonnel *against* Gunter and others.

*Hil.* 9 *Geo.* II. 1736. [*Barnes*, 335. S. C.]

*Thomson.*

A MOTION to reduce a long Declaration of four Counts into two, there being no Necessity for more as there had only been one Trespass, for which the action was brought; and the Court ordered the same, and that the Attorney should pay the Costs.

A Declaration reduced from four Counts to two, and Attorney to pay Costs.

The same Term *Morgan* against *Hill*, The like Rule, but no Costs.

*Olorenshaw* against *Stanyforth.* *Hil.* 9

*Geo.* II. 1736. [*Prac. Reg.* 197. *Barnes*, 201. S. C.]

*Cooke.*

ON a Rule to shew Cause why the Plaintiff should not be at Liberty to take out Execution upon the Judgment obtained, notwithstanding a Writ of Error brought, the same being ineffectual by the Death of Lord Chief Justice *Eyre*; the Rule made

Leave to take out Execution where the Writ of Error abated by the Death of the Chief

194 *Cases of Practice in the*

Justice. 1 *Sid.*  
268. 1 *Keb.*  
658. *pl.* 40.

absolute, the Lord Chief Justice not having signed the Return of the Writ of Error.

*Cranburn v. Quennel*, *Hil.* 9 *Geo.* II. and *Middleton v. Gardner*, the like Rules.

Judgment on a Warrant of Attorney taken of a Prisoner set aside, no Attorney for the Defendant being by.  
(a) But where the Defendant himself is an Attorney, the Warrant is good, tho' no other Attorney be present.  
*Vid. Walton v. Stanton*, *ante*, p. 94.

Carter an Attorney *against* Smith. *Hil.*  
9 *Geo.* II. 1736.

*Cooke.*

A WARRANT of Attorney taken by the Plaintiff to confess a Judgment to himself held not good, the Defendant being in Custody, and no other (a) Attorney present; whereupon the Judgment and Execution thereon were set aside, and Restitution ordered.

*Note*; In this Cause the Defendant was held to be in Custody, tho' the Officer left the Defendant some Time, whilst the Plaintiff *Carter* got the Warrant of Attorney from the Defendant.

Hutching *against* Lillyman. *Hil.* 9 *Geo.*  
II. 1736. [*Barnes*, 335. *S. C.*]

*Cooke.*

Judgment set aside where the Declaration was delivered to the Defendant, not being able to find his Attorney. *Vid. Morris v. Parry*, *ante*, p. 50; and *case there cited*.

A MOTION to set aside a Judgment; the Case was, The Plaintiff's Attorney not being able to find the Defendant's Attorney, delivered the Declaration to the Defendant himself, and for want of a Plea signed Judgment; and tho' the Defendant's Attorney owned the Receipt of the Declaration from his Client, yet the Judgment was set aside, for that the Declaration was delivered to the Defendant himself, and not received by his Attorney till after the *Effrein*-Day of this Term. [129]

*Craftell against Cocker. Hil. 9 Geo. II.*  
1736. [*Barnes*, 481. S. C.]

*Cooke.*

**A** MOTION to Change the Venue from *Mid-*  
*dlesex* to *Durham*; the Court refused to change  
the Venue to a County Palatine, and it was then said  
that the Court does not use to change the Venue to  
any County where the Assizes are held but once a  
Year.

Venue not to  
be changed into  
a County Pala-  
tine. *Vid.*  
*Gardiner v.*  
*Forbes*, ante, p.  
36; and cases  
there cited.

*Ling against Woodyer. Hil. 9 Geo. II.*  
1736. [*Barnes*, 69. S. C.]

*Cooke.*

**O**N Motion, it was ordered that the particular  
Hour of the Day on which the Defendant sur-  
rendered himself in Discharge of his Bail, should be  
specified in the Entry of the Surrender.

The Time of  
Surrender to be  
specified in the  
Entry. *Vid.*  
*Vandereff v.*  
*Wayler*, ante, p.  
53; and cases  
there cited.

*Crockhay against Martyn. East. 9*  
*Geo. II. 1736. [Prac. Reg. 255.*  
*Barnes*, 281. S. C.]

*Cooke.*

**T**HE Plaintiff being dead, the Defendant moved  
to have *10l.* out of Court; but it was objected  
thereto, that it belonged to the Plaintiff's Executor;  
on Debate and Counsel heard on both Sides, a Rule  
was made that the Plaintiff's Executor should bring  
a new Action, and in the mean Time all Things  
should stay.

Motion for  
Money out of  
Court, Plaintiff  
being dead.  
*Vid. Anon. ante,*  
*p. 5; and cases*  
*there cited.*

[N. B. See also the case of *Knapton v. Drew*, *Barnes*, 279.  
*Prac. Reg.* 252, S. C.]



*Humfryes against Daniel. East. 9*  
*Geo. II. 1736. [Prac. Reg. 183.*  
*Barnes, 202. S. C.]*

*Cooks.*

Pending a Writ of Error Plaintiff may bring Debt on the Judgment, and proceed to Execution, unless stayed by Motion.

**I**N an Action of Debt on a Judgment pending a Writ of Error, the Court held that the Plaintiff may take out Execution on the last Judgment notwithstanding the Writ of Error, unless the Defendant [130] moves to stay the Proceedings.

[N. B. In *Swift v. Tuckwell*, *Prac. Reg.* 186, the same decision. Semble, that in an action of Debt upon a Judgment, the Court of Common Pleas will only order a stay of Proceedings pending a Writ of Error, upon the Defendant giving Judgment in the second action; but that the practice in *K. B.* is different. *Vid. Sedgley v. Westbrook*, *Barnes*, p. 246.

In an action on a Judgment, where more than £10 is recovered, and where there was no Bail in the original action, the Defendant must put in Special Bail. *Vid. Jackson v. Duckett*, *ante*, p. 32.]

*Sidebotham against Frith an Attorney.*  
*East. 9 Geo. II. 1736. [Barnes, 336.*  
*S. C.]*

*Borret.*

Demurrer for an insufficient Memorandum to the Declaration on a Bill filed against an Attorney. *Vid. Adkin v. Worthington*, *ante*, p. 105.

**T**HE Defendant demurred, for that the Plaintiff in the Memorandum of the Entry of the Bill had not shown what was the Nature of the Action, as Debt or Case. The Court over-ruled this Objection, and said the Nature of the Action was sufficiently set forth in the Declaration.

*Southouse against Pye.*

*Cooke.*

**N**O Motion to set aside Judgment the last Day of the Term, unless it does appear that the Defendant could not sooner apply.

No Motion to set aside Judgment the last Day of Term, if Defendant could have applied sooner.

*Cooke against Holgate. Trin. 10 Geo.*

II. 1736. [*Prac. Reg.* 260. *Barnes*, 281. S. C.]

*Thomson.*

**M**OVED to bring many Household Goods into Court; if it had been any particular Thing they would have granted it, but they would not incumber the Court with many Goods; but made a Rule to shew Cause why the Plaintiff should not consent to accept the Goods and his Costs.

The bringing many Goods into Court denied, but a Rule for Plaintiff to shew Cause.

*Watkinson v. Cockbot, Hil. 6 Geo. II. Borret*, A Motion to bring Goods into Court denied.

*Humfreys against Mitchel. [Barnes,*  
408. S. C.]

*Cooke.*

**M**OVED to stay Proceedings, the Process being dated the 16th of June, but the Copy was dated the 26th of June.

Proceedings stayed, Copy served varying from the original Process.

[131] *Cur*, It is not a true Copy of the Process, therefore let Proceedings be stayed.

**Green against Bell.***Thomson.*

May amend  
Declaration by  
adding new  
Counts any  
Time before the  
End of the  
second Term.  
*Reg. Car.*  
*Mich. 1654.*  
*sec. 17.*

**A** MOTION to amend a Declaration by adding two Counts, and after hearing Counsel on both Sides, granted on payment of Costs; and it was settled to be the Course of the Court, that the Plaintiff may, at any Time before the End of the second Term, have leave to amend his Declaration by adding new Counts, but not afterwards.

**Huckle against Ambrose.** *Trin. 10*  
*Geo. II. 1736.* [*Prac. Reg. 87.*  
*Barnes, 70. S. C.*]

*Barret.*

To vacate a  
Render at a  
Judge's Cham-  
ber, because the  
Defendant re-  
fused to pay the  
Fees. *Vid.*  
*2 Keb. p. 2. ca.*  
*5.*

**M** OVED to vacate a Render, because the Defendant would not pay the Fees, which were not demanded till after the Render made. It is not a complete Surrender till it be entered on Record. Ordered that the Entry of the Render in the Judge's Book be struck out.

**Cartwright against Gardner.** *Trin. 10*  
*Geo. II. 1736.* [*Barnes, 7. S. C.*]

*Thomson.*

Amendment  
of a Record by  
striking out the  
Entry of a  
View, there  
being nothing

**A** VIEW from the Assizes, and the whole Entry on the Record since the Issue actually made; moved to strike out the whole Entry relating to the View, upon an Allegation that the Plaintiff could not proceed thereon, and cited a case between *Bratcher*

and *Cotton*, where the same was granted in *Hilary* Term last in Mr. *Cooke's* Office. The Court said such Rule was obtained by Surprise, and that such Alteration could not be made unless by some Entry to amend it by.

to amend by.  
*Vid. Hanson v. Chamberlin, ante,*  
p. 76.

Wrecks and his Wife *against* Robbins.  
*Mich. 10 Geo. II. 1736. [Prac. Reg.*  
*142. S. C.]*

*Cooke.*

**A** MOTION to set aside Judgment, because the Writ was sued out at the Suit of the Plaintiff only, and so consequently no foundation for the Action.

Declaration at the Suit of Husband and Wife, can't be delivered on a Process, at the Suit of the Husband only.

[132] The Question was, Whether the Plaintiff might not deliver a Declaration at the Suit of himself and Wife, on a Writ at his own Suit only. On hearing Counsel on both Sides, the Court declared that no such Action could be maintained, unless there had been Process at both Plaintiff's and his Wife's Suit.

If the Plaintiff had sued out a Writ at the Suit of himself and Wife, he might have delivered a Declaration at his own Suit, as a Declaration by the By.

*Welland against* Funicall.

*Cooke.*

**A** MOTION to change the Venue; the Plaintiff being an Attorney insisted on his Privilege as such; but it appearing that he sued the Defendant by *Capias* and not by Attachment, the Court declared

Venue may be changed, tho' the Plaintiff be an Attorney, if he sues by

*Capias. Vid. Mills v. Johnson, post, p. 134. Girdler v. Watbrow, p. 145.*

he was not intitled to the Privilege of an Attorney, unless he claimed it properly; if he sues as a common Person, he must be treated as such.

Lord Griffin *against* Bugby. *Trin.* 10  
Geo. II. 1736. [*Prac. Reg.* 417.  
*Barnes*, 482. *S. C.*]

Venue not changed in *Scan. Mag. Vid. Gardiner v. Forbes, ante, p. 36; and cases there cited. Earl of Stamford v. Browne, Prac. Reg.* 417.

*Thomson.*

IN an Action of *Scandalum Magnatum*, on Motion to change the Venue, it was agreed by the whole Court to be the constant Practice to deny such Motion.

Phillips *against* Hedges.

*Cooke.*

Attachment for Curfing the Chief Justice and Court on Service of Process.

A MOTION for an Attachment against the Defendant for curfing the Chief Justice and Court on Service of Process; the Words were *G—d D—the Lord Reeves and the Court*, and that he *neither cared for him or them*; and an Attachment was granted absolute, without any Rule to shew Cause, that being the constant Method for a Contempt of this Nature.

[*Vid. Anon. 1 Salk. 84. Rex v. Jones, Strange*, 185, where the same decisions were made. But *quære*, if an Attachment goes absolutely in the first instance for such a contempt, where the words are only sworn to by one witness. *North v. Wiggins, Strange*, 1068, 3 *Atkyns*, p. 219, *ca.* 76.

In *Chandler, Assignee, v. Page, Trin.* 18 Geo. III. 1778, an Attachment was sought against the Defendant for a Contempt against the Court, on the Affidavit of the person who served Process on Defendant, that he (the Defendant) beat him, and tried to make him eat it. The Lord Chief Justice granted a Rule to shew cause why an Attachment should not issue, but

*Blackstone* J. thought, on the precedent of *Philips v. Hedges*, that it ought to be absolute in the first instance. I (*Nares*) said it was never so done in a case of this nature, where the actual insult is not to the Court, but only to the person serving the Process. The Rule was made absolute the last day of Term without cause shewn.

[133] *Box against Read and others. Trin. 10 Geo. II. 1736. [Prac. Reg. 430. Barnes, 482. S. C.]*

*Cooke.*

A MOTION to change the Venue; on shewing Cause Mr. Serjeant *Belfield* appeared for some of the Defendants; and said he did not desire the Venue should be changed. The Plaintiff had entered an Appearance for those Defendants, and it seemed a Contrivance to disappoint the other Defendants of their Rule obtained to change the Venue; and tho' the Prothonotaries all declared this had never been done, yet the Court made the Rule absolute.

Venue changed, tho' some of the Defendants did not concur in the Motion. *Vid. Ld. Grif- fin v. Bugby, ante, p. 132, and cases there cited.*

*Hannot and others against Farrelles. Trin. 10 Geo. II. 1736. [Prac. Reg. 194. Barnes, 376. S. C.]*

*Barret.*

A PRISONER brought up by the Warden of the Fleet on a *Habeas Corpus* to be charged in Execution, but the Prisoner had served Notice of the Allowance of a Writ of Error; the Court would not stop the *Habeas Corpus*, but Defendant was charged in Execution notwithstanding.

Prisoner committed in Execution, tho' Writ of Error allowed.

*La Marque versus Newnam. Trin. 10 Geo. II. 1736. [Prac. Reg. 446. Barnes, 299. S. C.]*

*Cooke.*

Inquiry set aside for Incertainty in the Notice. *Vid. Hannaford v. Holman, ante, p. 99, and case there cited.*

**A** MOTION to set aside a Writ of Inquiry for Incertainty in the Notice given for the Execution thereof; the Notice was, that the same would be executed at *the Three Tuns in Brookstreet, Middlesex*, whereas there are three *Brookstreets in Middlesex*.

*Curia*: This Notice is incertain, for it does not say what *Brookstreet*, if it had been *Brookstreet, Holbourn*, it would have been good.

*Vid. Squire v. Almond, Prac. Reg. 446. Barnes, 297. S. C.*

*Davershill against Barret. Mich. 10 Geo. [134] II. 1736. [Prac. Reg. 298. Barnes, 337. S. C.]*

*Thomson.*

Tender no Issuable Plea after time given to plead. *Vid. Leaver v. Whitcher, post, p. 139.*

**A** MOTION to set aside Judgment, signed after Plea of Tender delivered; the Defendant was by Rule obliged to plead an Issuable Plea; a Tender is no Issuable Plea within the Meaning of this Rule; therefore the Judgment was held good.

*In Lane v. Smith, Barnes, 252, the same decision.*

De Ceriffay *against* O-Brien. [Barnes,  
375. S. C.]

Cooke.

A MOTION to stay Proceedings against the Defendant, he being a Courier in the Service of Sir Thomas Geraldino the Spanish Envoy; the Plaintiff alledged the Defendant was a Trader. On the other Side it was said, that the Circumstance of the Trade was so minute, that it could not amount to a Trading, and that the Defendant could not be a Bankrupt under that Circumstance; but it was replied, that a probable Cause will make a Bankrupt; and it was further alledged, that the Defendant was no Domestick Servant, being a Courier, and paid for each Journey, and neither living in the House, nor receiving Wages by the Year, and that being registered in the Sheriffs Office was not material. The Court discharged the Rule to stay Proceedings.

Motion to stay Proceedings against an Ambassador's Servant, *Stat. 7 Ann. c. 12. Vid. Martin v. Sbaropin, ante, p. 65. Ward v. Purcel, 1 Barn. 79, 80.*

In the Case of *Toms and Hammond, Prac. Reg. 14, Barnes, 370, f. c.*, the Certificate was that the Defendant was a menial Servant to the *Mecklenburgh* Envoy, and held that a menial Servant was not within the Act, the Words of the Statute being *Domestick, or Domestick Servant*, who as such are employed in and about the House, on Household Affairs only.

Mills *against* Johnson an Attorney. *Mich.*  
10 Geo. II. 1736. [*Prac. Reg. 419.*]

Thomson.

A MOTION was made to change the Venue, the Defendant insisting that being an Attorney

Attorney no Privilege to



change the  
Venue where  
he is Defen-  
dant.

*Carik*, 126.

he was only to be sued in *Middlesex*, where his Business required his Attendance; a Rule was granted to shew Cause; but the Court on shewing [135] Cause discharged the Rule, because the Defendant, tho' an Attorney, hath no Privilege, as Defendant, to be sued in *Middlesex* only.

*Vid. Gardiner v. Forbes*, ante, p. 36 and cases there cited, and *Carthew*, 126, 1 *Shower*, 148, *Salk*, 668.

### Goodright against Hugginſon.

*Borret.*

What Bail on  
Writ of Error  
in Ejectment.  
*Vid. Goodtitle*  
*v. Benington*,  
poſt, p. 142.

THE Question was, in what Sum Ball ſhall be given on Allowance of a Writ of Error in Ejectment; the Court allowed the Recognizance for a Year and half's Value of the Land, and for double the Coſts, to be ſufficient.

Sherlock, Executor, *verſus* Temple.  
*Mich.* 10 *Geo.* II. 1736. [*Barnes*,  
337. *S. C.*]

*Cooke.*

Demurrer with-  
drawn on Pay-  
ment of Coſts.  
*Vid. Martindale*  
*v. Galloway*,  
ante, p. 96.  
*Hunt v. Puck-*  
*more*, poſt, p.  
141.

A RULE to ſhew Cause why the Defendant ſhould not have leave to withdraw his Demurrer and plead the general Iſſue; the Plaintiff inſiſted, that it was not reaſonable to give the Defendant that Liberty, ſince by the Demurrer he had admitted the Fact, and depended merely on the Matter in Law; but the Court were of Opinion that a Demurrer might be withdrawn if the Party came in a reaſonable Time, on Payment of Coſts; and they gave Leave accordingly.

Gilbert *versus* Nightingale. Mich. 10  
Geo. II. 1736.

Thomson.

THE Plaintiff moved to quash his own Writ of Inquiry for Smallness of Damages; but the Court denied the Motion, and said that it was never granted, except for a Misdemeanor in the Sheriff or other Officer.

Motion for a new Writ of Inquiry for Smallness of Damages, denied. *Vid. Gilbert v. Mar- stead, ante, p. 89.*

Wright *versus* Kirswill. Mich. 10 Geo.  
II. 1736. [*Barnes, 376. S. C.*]

Cooke.

A SUPERSEDEAS was granted to discharge the Defendant for the Plaintiff's not proceeding to Judgment; afterwards the Plaintiff proceeds to Judgment, and the Defendant being taken in Execution, now moved for a *Superfedeas*, the Defendant having been discharged on the former *Superfedeas*; the Court took Time to consider of it, and afterwards determined that the Defendant might be taken [136] in Execution, tho' he had been discharged for want of proceeding to Judgment; but if it had been for want of proceeding after Judgment to charge the Defendant in Execution, then it would have been otherwise, and he would have been entitled to his Discharge.

Judgment and Execution after a *Superfedeas*. *Vid. Clark v. Venner, next page.*

[In *Ismay v. Devin*, 2 *W. Black*, 982, where *Wright v. Kirswill* is cited, it was held, that if after judgment the defendant is superseded for want of being charged in execution, and then debt is brought on that judgment, and judgment recovered thereon, the defendant may be taken on such second judgment.]

Bland *qui tam*. against Fetherstone. *Mich.*  
10 *Geo.* II. 1736. [*Prac. Reg.* 226.  
*Barnes*, 118. *S. C.*]

*Borret.*

Leave to com-  
pound on a  
*Qui tam*.

IN an Action *Qui tam* on the Statute of Usury,  
a motion for leave to compound for the several  
Sums for which the Action was brought, and granted  
by the Court, with the Consent of Mr. Serjeant  
*Bootle* for the Plaintiff.

*Note*; A Rule for the same Purpose, without any Consent  
therein, was produced, which was made in the King's Bench  
in *Trin.* Term in the 6th Year of King *Geo.* II. *Dell qui tam*,  
against *Wyat*.

Lucas against Rudd. *Mich.* 10 *Geo.* II.  
1736. [*Prac. Reg.* 423. *S. C.*]

*Cooke.*

Venue changed,  
the Plea was  
given before  
the Day of  
shewing Cause.  
*Vid. Treasure v.*  
*Wright*, ante,  
p. 57, and cases  
there cited.  
*Herbert v.*  
*Flower*, *Barnes*,  
492.

A RULE to shew Cause why the Venue should  
not be changed, and after this Rule made, and  
before the Day of shewing Cause, the Defendant  
pleaded, which it was insisted on was a Waiving of  
his Rule; yet the Court made the Rule absolute,  
seeing his first Application to the Court to change  
the Venue, was made before the Plea pleaded.

[In an action by a prisoner against a sheriff, turnkey, and  
gaoler for putting irons on him, leave was given to two of  
the defendants for further time to plead, although the third  
had done so within the regular time. Afterwards a motion  
was made on behalf of the defendants to change the venue,  
which was granted, for the court said that the privilege of  
changing the venue is for the sake of justice and not for the  
pleadings. Between *Webber & Tucker and others*. *C. B.*  
*Trin.* 4, *Geo.* 3.

In this case all the judges were consulted, except Lord  
Mansfield and Mr. J. Denison.]

Clarke *against* Venner. Mich. 10 Geo. II. 1736. [*Prac. Reg.* 333. Barnes, 377. S. C.]

*Cooke.*

**A** MOTION to discharge the Defendant out of Execution, who was before discharged for want of the Plaintiff's proceeding to Judgment; afterwards the Plaintiff proceeded to Judgment, and took the Defendant in Execution. Mr. Justice *Denton* said he had consulted with the Justices of the King's Bench, and one of the Judges told him that the constant Practice of that Court was, that where a Defendant is discharged for want of proceeding to Judgment, the Plaintiff may afterwards proceed to Judgment, and take him in Execution thereon, and he shall not be discharged. But if the Plaintiff had [137] proceeded to Judgment, and the Defendant was discharged for want of being charged in Execution, he should be totally discharged, and cannot after that be charged in Execution.

Prisoner discharged for want of proceeding to Judgment, may afterwards be taken in Execution, but where Defendant is discharged by *Superfedeas* for want of being charged in Execution, he shall be totally discharged, and can't be afterwards taken in Execution. *Vid. Wright v. Kirswill, supra.*

Whitehead *against* Shaw, and the same *against* Whitfield. Mich. 10 Geo. II. 1736. [*Prac. Reg.* 292. Barnes, 252. S. C.]

*Borret.*

**O**N a Motion to set aside a Judgment, it was declared, that where Application is made to a Judge for Time to plead, and a Summons granted, after the Rule to plead is out, such Summons must

A Summons after Rule to plead out, no Stay of Proceedings. *Vid.*

*Ottiswell v. D'Att, post,*  
p. 142.  
*Cabot v. Ld. Lyttleton, 2 W. Black, 954.*

be look'd upon as obtained by Imposition on the Judge, and consequently the Plaintiff may proceed notwithstanding such Summons.

*Denny versus Wigg. Mich. 10 Geo. II. 1736. [Prac. Reg. 41. S. C.]*

*Cooke.*

Full Costs, in Slander, tho' Damages under 40s.  
*Vid. Beck v. Nicbolls, ante, p. 24, and cases there cited.*

ON a Motion that the Court would direct the Prothonotary to tax full Costs, in an Action for the following Words, spoke of the Plaintiff in his Trade of a Grocer, viz. *You sell your Goods by false Weight, you sell but fifteen Ounces to the Pound, and I never had of you more than fifteen Ounces for a Pound instead of sixteen.* By the speaking of which Words the Plaintiff is not only hurt in his good Name, but several Persons, to wit, *R. B. and T. H.* who before were wont to buy Goods of the Plaintiff in his Trade, have since left off Dealing with him. At the Trial a general Verdict was found for the Plaintiff and 10s. Damages.

21 Jac. I. cap. 16. s. 6.

It was insisted for the Plaintiff that the Special Damages took this Case out of the Statute; for this is no more than a Special Action upon the Case for the Special Damages by the Means of speaking of those Words, and the rather because no other Action could be brought for the Special Damages, for in order to introduce that, the Words that occasioned it, must be declared upon as they are in the present Case; and to support this, the following Cases were cited, *Cro. Car. 140, 163, 306. Salk, 206. In Anderson versus Burton. 1 Stran. 192.* Trespass for putting infected Cattle into the Plaintiff's Clofe; *per quod* the Plaintiff's Cattle became infected;

Verdict for the Plaintiff, and 20s. Damages; and ruled not to be within the Statute; three Justices against *Eyre* Justice; and the Plaintiff had full Costs. And *Carter versus Fish*, 1 *Stran.* 645, and [138] *Philips versus Fish*, 8 *Mod.* 371, for Words *you stole my Hen*, by means of speaking which Words the Plaintiff was carried before a Justice and detained, &c. Verdict for the Plaintiff and 1s. Damages, and ruled by all the Court of *B. R.* that both Plaintiffs should have full Costs upon the Authority of *Cro. Car.* 163, which was said by *Raymond*, Chief Justice, to be a Case in Point.

For the Defendant it was said, that the Distinction was when the Words would or would not bear an Action of themselves; in the last Case the Plaintiff should have full Costs, but not in the former, and that it had been lately so adjudged in *B. R.*

*Curia*: There is no Foundation for such a Distinction; let the Plaintiff have full Costs.

*Bracher versus Cotton. Hil. 10 Geo. II.*  
1737. [*Prac. Reg.* 103. *Barnes*, 123.  
*S. C.*]

*Cooke.*

THE Cause at the first Assizes was made a *Remanet*, at the Second a View, at the Third the Cause was refer'd, and at the Fourth a Verdict was found for the Plaintiff.

No Costs on a  
*Remanet* or a  
Reference.

It was now moved for the Plaintiff, that the Costs of the first and third Assizes might be allowed; but the Motion was denied. The Prothonotaries all declared that no costs could be allowed for the *Remanet* or the Reference, there being no Proceedings

thereon, and that this is the Practice, except on a Reference, there be an Agreement that the Costs should attend the Event of it.

Eyles, Bart., *versus* Smart. *Mich.* 10  
Geo. II. 1736, or *Hil.* 1737. [*Prac.*  
Reg. 248. Barnes, 123. S. C.]

*Thomson.*

What Costs  
for a Special  
Jury on the  
Stat. 3 Geo. II.

**A** MOTION for Directions to the Prothonotary in taxing Costs for a Special Jury struck in this Cause by the Prothonotary, on the Stat. 3 Geo. II. cap. 25, s. 16, for the better regulating of Juries, whereby it is enacted, *That the Party applying for a Special Jury shall pay the Fees for striking such Jury, and shall not be allowed it on taxing the Costs.* The Court declared they would not extend the Act further than to the striking; the other reasonable Costs relating to the Special Jury are to be paid and allowed to the Party obtaining the Verdict in such Case. [139]

[N.B.—Special jurymen are not to be paid if they do not serve, though they are attending ready to serve. *Noon v. Vallat*, Trin. 14 Geo. III.]

Leaver *versus* Whicher. *Mich.* 10 Geo.  
II. 1736, or *Hil.* 1737. [*Prac. Reg.*  
235. Barnes, 253. S. C.]

*Cooke.*

Defendant not  
allowed to plead  
the Statute of  
Limitations  
after a regular  
Judgment set

**I**N this Cause a regular Judgment was set aside, and the Defendant had Leave to plead an issuable Plea, but he pleaded the Statute of Limitations.

*Court of Common Pleas.* 211

The Plaintiff moved to set aside that Plea, which was granted; for where the Defendant has had an Opportunity of pleading the Statute, but lets Judgment go by default, and afterwards applies to set aside that Judgment, he shall not be let in, but upon Payment of Costs and pleading the general Issue.

aside, *ante*, p. 134.  
*Vid. Dovershill v. Barret, ante*, p. 134, and *cases there cited*.

*Note*; Where a Plea of Justification was absolutely necessary to try the Merits, and the Plaintiff had not been delayed of a Trial, the Court have admitted the Defendant to make such Defence, tho' the Judgment set aside was regular.

In *Cruise v. Williams, Prac. Reg.* 236, *Barnes*, 260, *S. C.* the Court admitted an Administrator to plead *Plene administravit* generally, which was look'd upon as the general Issue.

*Sibson versus Niven, Widow. Mich.*

10 *Geo. II.* 1736, or *Hil.* 1737.

[*Prac. Reg.* 225. *Barnes*, 224. *S. C.*]

*Cooke.*

**A**N ACTION for Words touching the Murder of the Defendant's Husband; the Defendant moved the Court for an Impar lance, because the Plaintiff was indicted for the Murder in the Admiralty Court, the Fact being committed upon the High Seas, and alleged that if this Cause be tried in this Court, the Strength of the King's Evidence would be discovered, and that this Action was only an Artifice of the Plaintiff's, to discover what Evidence the Prosecutrix had against him.

Impar lance granted in Slander, Defendant being indicted.

On great Debate, the Court granted an Impar lance till next Term.



King's Cafe. *Hil.* 10 *Geo.* II. 1737. [140]  
[*Prac. Reg.* 219. *S. C.*]

*Cooke.*

Attachment  
against Sheriffs  
for not bringing  
up a Prisoner.  
*Stat.* 31 *Car.* II.  
*cap.* 2. *Vid.*  
*Edmond's Case*,  
*ante*, p. 8, and  
*cases there cited.*

**A** MOTION for an attachment against the Sheriffs of *Bristol*, for not bringing up the Defendant on a *Habeas Corpus*. It appeared that seven Guineas had been tendered to the Sheriffs, which was more than was due by the Statute, at 1s. per Mile, but they refused to take it; and therefore the Court ordered an attachment against them.

*Note*; The Sheriffs afterwards agreed to bring a *Habeas Corpus* at their own Expence, and pay the Defendant his Costs.

Mendes *versus* Woolfe. *Hil.* 10 *Geo.*  
II. 1737. [*Barnes*, 377. *S. C.*]

*Cooke.*

Prisoner al-  
lowed 2s. 4d.  
per Week, from  
each Plaintiff.  
*Vid. Cope's Case*,  
*ante*, p. 110.

**T**HE Plaintiff desired to be excused from allowing the Prisoner 2s. 4d. per Week, he having already an Allowance of 2s. 4d. per Week at another Plaintiff's Suit. This being a new Point, the Court took time to consider of it, and afterwards gave their Opinion, that the Defendant should be allowed 2s. 4d. per Week from every Plaintiff that should insist on his being detained in Execution.

Newman *versus* Harrifon, an Attorney.  
*East.* 10 Geo. II. 1737.

*Cooke.*

**T**HE Defendant had been summoned to attend a Judge of this Court, and was taken in Execution while he was attending in order to wait upon the Judge; the Plaintiff produced an Affidavit, that the Defendant owned he was then at Leisure, and accordingly then went with the Plaintiff to a Coffee-house, and gave his Opinion in a Case that was then proposed to him; this Matter was in a great Measure denied by the Defendant's Affidavit; and it appearing to be a Contrivance of the Plaintiff, to seduce the Defendant from attending on his Business, and make him liable to be taken in Execution; the Court was of Opinion, that it was still a Violation of the Privilege allowed to Attornies, and discharged the Defendant.

Attorney attending a Judge. taken in Execution, discharged. *Vid. Gordon v. Sheers, ante, p. 60, and cases there cited.*

[141] Dawson *against* Garth. *East.* 10 Geo. II.  
 1737. [*Prac. Reg.* 291. S. C.]

*Borret.*

**T**HE Defendant had obtained a Judge's Order for Time to plead, but not pleading within the Time limited by the Order, the Plaintiff signed Judgment.

It was objected that no Rule to plead was given; but the Court said that the Judge having given Time to plead, there was no Occasion for a Rule, so the Judgment was held regular.

A Rule to plead not necessary, where a Judge has given Time to plead.

Hunt against Puckmore. East. 10 Geo.  
II. 1737. [Barnes, 155. S. C.]

*Borret.*

Leave to withdraw a Demurrer and plead issuably on Payment of Costs, after Plaintiff had lost the Benefit of a Trial, being in Case of an Heir, *Vid. Martindale v. Gallovey, ante, p. 96. Sherlock v. Temple, post, p. 135.*

A MOTION that the Defendant might be at Liberty to withdraw his Demurrer, and to rejoin issuably to the Plaintiff's Replication; a Rule *Nisi* was made; on shewing Cause it was objected, that the Plaintiff had lost a Trial; but on the other Hand it appeared that the Defendant being sued, as Heir to his Father, and having pleaded *Riens per Descent*, had by the Mistake of his Counsel, (as was owned) demurred to the Plaintiff's Replication, wherefore it was urged that it would be extremely hard upon him, if he should not have Leave to withdraw his Demurrer, and plead issuably; the Counsel confessing he had mistaken the Law, and Judgment (it was not doubted) would be given for the Plaintiff on the Demurrer, which would be to recover his whole Debt against the Defendant, tho' he had very little Assets descended to him; the Defendant was willing to satisfy the Plaintiff's Debt, so far as Assets had descended, which might be tried on the Issue of *Riens per descent*. The Court considering the Circumstances of the Case, granted the Motion on Payment of Costs, notwithstanding the Plaintiff had lost an Opportunity of trying his Cause. *Hawkins* for the Defendant; *Wright* for the Plaintiff.

*Note*; It was mentioned again the next Day by Mr. Justice *Denton*, that this Rule was contrary to the established Practice of the Court, but it was answered, that tho' the general Practice is, that after a Trial lost the Court will not permit a Demurrer to be withdrawn, yet this being so particular a Case, and the Circumstances therein so hard on the Defendant, it

was more reasonable to let the Rule stand as pronounced, than to suffer so manifest an Injustice to fall on the Heir at Law.

[142] *Ottiwell against D'Ath. Trin. 10 & 11 Geo. II. 1737. [Prac. Reg. 292. Barnes, 254. S. C.]*

*Thomson.*

A MOTION made to set aside a Judgment, which had been signed after a Summons for Time to plead taken out and served on the Plaintiff's Attorney; but it appearing that the Summons was taken out after the Expiration of the Rule to plead, the Court said that the Plaintiff was not obliged to take Notice thereof, and held the Judgment to be regular, but set the same aside on Payment of Costs, and pleading the general Issue.

Summons for Time to plead after Rule out no Stay of Proceedings.  
*Vid. Whitehead v. Shaw, ante, p. 137.*

*Goodtitle against Bennington, and others. Trin. 10 & 11 Geo. II. 1737. [Prac. Reg. 179. Barnes.]*

*Cooks.*

A MOTION to oppose Justifying Bail in Error after Verdict in Ejectment; because by the Statute of 16 & 17 Car. II. cap. 8, s. 3, after Verdict in Ejectment or Dower, the Plaintiff in Error must be bound to the Plaintiff in the Original Action. The Clerk of the Errors certified that the Practice has been sometimes for the Plaintiff in Error to become bound, and sometimes to put in Bail, and oftner so than otherwise.

What Bail in Error, after Verdict in Ejectment.

The Court said they would not prevent justifying the Bail, however the Practice had been, and the Bail was accordingly justified.

Afterwards in *Michaelmas* Term the 11th *Geo. II.* a Motion was made for Leave to take out Execution, because the Plaintiffs in Error were not bound as the aforesaid A& directs; it was said that if the Defendant in Error thought he was intitled, and should proceed to Execution, it would be at his own Peril.

*Note;* In the Case of *Doe v. Lufington*, *post*, p. 152, this Point was again debated, and it was then likewise held, that the Plaintiff in Error need not become bound.

[Motion by Davy, St. to Justify Bail in Error. One of the Bail could not justify for the whole, though he was worth more when Bail was put in, but by a subsequent accident had lost a great deal, but the other Bail offered to justify as much as would supply the Deficiency of the other; But per Gould, I and myself; the Defendant in Error is intitled to two sureties for the sum recovered, therefore each Bail must answer for the whole, so the Bail was disallowed, there being no pretence for real Error, and it being a Rule in Error never to give further time. *Aylet v. Burlinge. Pasch. 20 G. 3.*]

Atwood against Meredith. *Mich. 11* [143]  
*Geo. II. 1737. [Prac. Reg. 349.*  
*Barnes, 300. S. C.*

Copy of Special Writ served without Notice to appear. *Vid. Linaker v. Hudson*, a Case in *B. R.* ruled on this Motion. *Morse v. Farnham, Barnes*, p. 242. *Longbotham v. Knap, Barnes*, p. 404.

*Cooke.*

A RULE to shew Cause why Proceedings should not stay; a Copy of the Special Writ (in which the Damages were laid above 10*l.*) having been served without any Notice to appear, and the Appearance entered by the Plaintiff for the Defendant, whereas it should have been served with Notice, tho' the Debt was above 10*l.* for the A&s of the 12 *Geo. I. c. 27*, and 5 *Geo. II.*, in this Case are to be taken as one Statute; the Rule was made absolute.

Simpson *against* Duffield and his Wife,  
Administrators. Mich. 11 Geo. II.  
1737. [*Barnes*, 254. S. C.]

*Cooke.*

A RULE to shew Cause why Judgment should not be set aside; it appeared the Rule to plead was given on *Monday* the 24<sup>th</sup> of *October*, and was out the *Thursday* after, Oyer was demanded on the *Wednesday* and given on the *Thursday*, and Judgment was signed on the *Friday* in the Afternoon.

*Curia*; The Plaintiff's Attorney should have stayed and not signed it till *Saturday* in the Afternoon, for the Defendant shall have the same Time to plead after Oyer given, as he had when Oyer was demanded.

Defendant shall have the same Time after Oyer given, as was unexpired when Oyer was demanded.

*Vid. Littlebales v. Smith, ante, p. 73, and cases there cited.*

Craven *against* Handley. Mich. 11 Geo. II. 1737. [*Prac. Reg.* 240. *Barnes*, 255. S. C.]

*Borret.*

A MOTION for Leave to enter a Judgment *nunc pro tunc*, and a Rule for Defendant's Executor to shew Cause; the Case was, the Defendant pleaded a bad Justification, the Plaintiff joined Issue, and a Verdict was for the Defendant; but the Issue being immaterial, a Rule granted to stay the Entry of the Judgment on the Verdict, and for Leave for the Plaintiff to sign Judgment, the Trespass being confessed by the Plea; whilst this Matter was under the Consideration of the Court the Defendant died.

Leave granted to enter Judgment *nunc pro tunc*. *Vid. Crisp*

*v. Mayor of Berwick.* 1 Sid. 381, 462, 1 Lev. 252, 1 Vent. 58, 90. *Sir T. Raym.* 173. 2 *Keb.* 391, 397, 414, 602, 676, 1 Mod. 36, S. C.

*Taylor v. Mat-  
thews*, 10 *Mod.*  
325. *Jones v.*  
*Bodimer*, *Carth.*  
370.

And now on shewing Cause for the Defendant's Executor it was insisted that the Plaintiff had delayed himself by joining in an immaterial Issue, and therefore ought to suffer; on the other side it was said, that it would be very hard the Plaintiff should suffer, while the Court does a Thing for the Advancement of Justice. [144]

*Curia*; The Party must not suffer by the Court's taking Time to consider, let the Rule be made absolute.

*Brown against Godfrey. Mich. 11 Geo.*  
II. 1737. [*Barnes*, 255. *S. C.*]

*Thomson.*

Judgment set  
aside because  
the Judge's  
summons was  
not first dis-  
charged.

A JUDGE'S Summons for Time to plead; the Defendant's Attorney did not attend, and the Plaintiff's Attorney signed Judgment; but the Court set aside the Judgment, because the Plaintiff's Attorney should have first discharged the Summons.

*Rivers* and another against *Plumlee*, *Prac. Reg.* 240, the like Resolution.

*Simpson against Warren.*

*Cooks.*

Motion by a  
Prisoner for a  
*Superfedeas*  
denied, Affi-  
davit of the  
Debt having  
been made in.  
*B. R.*

A MOTION for a *Superfedeas*, because there is no Affidavit of the Debt in this Court, the Defendant being a Prisoner, and a Rule was made to shew Cause. The Case was, an Affidavit of the Cause of Action had been made in the King's Bench, and Defendant arrested by *Latitat*; after the Arrest the Defendant removed himself by *Habeas Corpus* to the *Fleet*, and the Plaintiff declared against him there,

but the Person who made the Affidavit being gone abroad, the Rule of this Court, *Hil. 8 Geo. II. Reg. 1*, for making an Affidavit of the Debt, and certifying it on the Declaration, could not be complied with; but it appearing, by a Copy of the Affidavit of the Debt made and filed in the King's Bench, to be the same Cause of Action, the Court discharged the Rule, being of opinion that that\* Rule extends only to Cases where the Delivery of a Declaration against Prisoners is the first Proceeding.

\* *Reg. Car. Hil. Geo. II.*

[145] *Grimes against Clever. Mich. 11 Geo. II. 1737. [Prac. Reg. 242. Barnes, 255. S. C.]*

*Thomson.*

**M**OTION to set aside an Interlocutory Judgment, for a Defect in the Notice of the Declaration served on the Defendant, but it appearing that a Writ of Inquiry was executed, the Motion was denied; the Defendant should have applied two Days before the Day appointed for the Execution of the Writ of Inquiry.

Motion to set aside judgment denied, coming too late. *Vid. Smith v. Jenks, ante, p. 69, and cases there cited.*

*Note*; It was said that when the Irregularity complained of is in the Copy of the Process, or the Notice subscribed thereto, the Complaint must be made before Judgment is signed; but if it be in the Delivery or Notice of the Declaration, then Complaint must be made two Days before the Execution of the Writ of Inquiry.



Girdler, Serjeant at Law, *against* Watthews. *Hil.* 11 *Geo.* II. 1738. [*Prac. Reg.* 240. *Barnes*, 484. *S. C.*]

*Cooke.*

A Serjeant Suing as a common Person, loses his Privilege, and Venue changed. *Willand v. Fenical*, *ante*, p. 132.

ON a Motion to change the Venue, the Question was, Whether the Plaintiff not suing by Writ of Privilege, but suing as a common Person by Original, should have the Benefit of his Privilege, to retain the Venue in *Middlesex*: It was held that he loses it, and the Venue was changed.

Roundel *against* Powel. *Hil.* 11 *Geo.* II. 1738. [*Prac. Reg.* 244. *Barnes*, 256. *S. C.*]

*Thomson.*

Leave to enter Judgment on an old Warrant of Attorney, the Defendant being in *Jamaica*.

MOTION for Leave to enter Judgment against the Defendant, on a Warrant of Attorney after a Year: To shew that the Defendant was alive, it was sworn in the Affidavit, that he was seen in *Jamaica* the 13<sup>th</sup> of *September* last, and that the Deponent sailed from thence the 17<sup>th</sup> of that Month, and arrived in *London* the 15<sup>th</sup> of *January* following; [146] the Court made a Rule for Leave to enter the Judgment, the Application being made by the Plaintiff as soon as he could well do it.

*Note*; Where a Warrant of Attorney has been executed twenty Years or upwards, the Court will not grant an absolute Rule to enter Judgment on the usual Affidavit, (that the Warrant was duly executed, the Debt unpaid and the Parties living) but the Rule will be to shew Cause.

Smith *against* Hoff. Hil. 11 Geo. II.  
1738. [*Prac. Reg.* 394. *Barnes*, 301.  
S. C.]

*Thomson.*

A MOTION to set aside a Verdict for Irregularity in the Notice of Trial; the Plaintiff had countermanded his Notice of Trial for the second Sittings in Term, and at the same Time continued the Notice till the third Sittings, which being contradictory, the Defendant made no Defence; the Court said the Plaintiff should have continued it only, and set aside the Verdict.

Notice of Trial both countermanded and continued is ill. *Reg' Cur' Mich.* 1654, sec. 21. *Vid. Deighton v. Dalton*, ante, p. 15, and cases there cited.

[*N.B.*—A motion to set aside Judgment for irregularity. The notice for trial was for sittings after Term, which was countermanded with continuance of notice to the sittings in the next Term. Per. Cur. "That is irregular, for the notice can only be continued to the sittings in that Term or after, and a new notice would be necessary for another Term." *Eastmead v. Skelton*, B. R. Hil. 28 Geo. 2.

So, a verdict was set aside for Irregularity of Notice of Trial, where it had been continued for sittings after Term, and that notice was served after the Court rose. Held that the service was bad, for it must be made *sedente Curia*. *Bramley v. Munday*, Hil. 29 Geo. II. *Vid. Brind v. Torris*, 2 *W. Black*, 1205.]

Davies *against* Powell and others. Hil.  
11 Geo. II. 1738. [*Willes*, 46. 7 *Mod.*  
249. S. C.]

TRESPASS for entering the Plaintiff's Close, called the Park, and taking his Deer; the Defendants as Servants to the Lord *Cadogan*, justify the taking as a Distress for Rent in Arrear. To this Plea the Plaintiff demurred generally; after several

Deer distrainable for Rent.

Arguments on both Sides, the Lord Chief Justice delivered the Opinion of the Court.

The Question is, Whether these Deer were distrainable? It's insisted that they were not. First, Because they are *feræ Naturæ*. Secondly, Because they are Hereditaments. Thirdly, Because Part of the Thing demised. And fourthly, Because such a Distress was never known before. To the First they cite *Finch* 176. *Co. Lit.* 47 a, note 11. 1 *Rol. Abr.* 666. (*H. pl.* 1.) *Mallocks v. Eastly*, 3 *Lev.* 227; and several other Authorities. That they are not distrainable, 3 *Inst.* 109, 10. 1 *Hawk. Pl. C.* 94, the Case of the *Swans*, 7 *Coke, Rep.* 156, but the *Register* 202 (and which is a Book of the greatest Authority in the Law) shews that this Rule is not a general Rule. The Reason why Deer are said not to be distrainable, is because they were considered as Things not of Profit, and in which no Man could have a valuable Property; but that fails now, the [147] Plaintiff himself admits that a Man may have a Property in them by bringing this Action, in which he calls them *his*, and the Defendants likewise justify and say that they took the Deer, being the Property of the Plaintiff, and that they sold them for Eighty-seven Pounds, which plainly imports that a Man may have a Property in them, and in this Case a Valuable one, and this is confessed by the General Demurrer.

The 3d. *Inst.* 110 *H. Pl. Cor.* makes the Difference between tame Deer and Deer at large in a Forest; but if so, they must be taken to be tame Deer in this Case.

As to the second Reason because they are Hereditaments, *Co. Lit.* 47 a; 7 *Co.* 17 b, Hereditaments are not distrainable, and Deer in a proper Park

may be so far a Part of the Inheritance of that Park as not to be distrainable, but this cannot be taken to be such a Park, but only a Park in Reputation. *Hale's Hist.* 491.

As to the third Reason, that the Deer were Part of the Thing demised, the Case of Tithes was mentioned, but that is not to the Purpose, because Tithes are not properly demisable, nor a proper Rent reservable upon it, but only a Personal Contract; we agree that generally a Part of the Thing demised is not distrainable, but in this Case it appears that the Deer were not Part of the Demise, because saleable before the End of the Term.

A Reason *ab inusu* is generally a good Reason, but the Nature of Things may in Time change; it is now well known they are become Chattels of Profit, and the Practice of Grazing so general, as to be deemed a good Improvement of a Farm; the Reason of this thing therefore being altered, the Law must vary with it.

We are all agreed, that these Deer upon all the Circumstances of this Case, were properly distrainable. Judgment for the Defendants.

*Vid. Blackstone's Com. 4 ed. vol. 3, p. 8, where this case is cited.*

[148]                      Horry against Bant.

IN Replevin; the Avowry was for Rent in Arrear, and sets forth a Demise of the *locus in quo* at 7*l. per Annum*, payable Quarterly, and that 11*l. 4s.* was in Arrear for a Year and three Quarters Rent, and that therefore the Distress was made: A general Demurrer to this Avowry, because no such

Avowry  
amended after  
Argument on  
Demurrer.

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Sum as 11*l.* 4*s.* could be in Arrear ; the Cause was put in the Paper and spoke to, and this mistake of 11*l.* 4*s.* instead of 12*l.* 5*s.* being insisted upon, it went off, and now the Avowant moved for Leave to amend, and notwithstanding it had been once spoken to, the Court made a Rule for the Amendment, on Payment of Costs.

*Note* ; For the amendment were cited 3 *Lev.* 347, and *Middleton versus Crofts*, in *B. R. Mich.* 8 *Geo.* II. 2 *Strange*, 1056. In Prohibition, an amendment after the Cause in the Paper had been twice spoken to.

Rushell *against* Gately. *East.* 11 *Geo.* II. 1738. [*Prac. Reg.* 66. *Barnes*, 76. *S. C.*]

*Thomson.*

Whether Bail for malicious Prosecution, the Plaintiff having been acquitted on a Flaw in the Indictment and not on the Merits.

**T**HIS was an Action for a malicious Prosecution for Forgery ; upon an Affidavit the Plaintiff had obtained a Judge's Order for holding the Defendant to Bail for 200*l.* for the Defendant being assessed and held to Bail accordingly, applied to the Judge who made the Order, the Judge not being fully satisfied, directed the Defendant to apply to the Court, whereupon he moved the Court to be discharged on entering a Common Appearance, and by Affidavits shewed that the Plaintiff was acquitted on a Flaw in the Indictment and not on the Merits.

*Cur'*: Let the Plaintiff shew Cause why a Common Appearance should not be taken.

[149] *Ibbotson against Brown. East. 11 Geo.*  
 II. 1738. [*Prac. Reg. 110. Barnes,*  
 124. *S. C.*]

**A** MOTION for Directions to the Prothonotary to allow the Plaintiff full Costs, on the Authority of *Affer v. Finch* in 2 *Lev.* 234. The Case was Trespafs for breaking his Close, &c., the common Bar, and new Assignment, to which the Defendant pleaded Not Guilty, a Verdict for the Plaintiff at *York Assizes*, and the Jury gave 5s. Damages and 40s. Costs.

Jury may give what Costs they please, although they fix the Damages under 40s. *Vid. Beck v. Nicholls, ante, p. 24, and cases there cited.*

On shewing Cause it was insisted for the Defendant, that this was no Special Pleading, and therefore the Case in *Levinz* is an Authority in Favour of the Defendant.

*Cur'*: 'Tis no Special Pleading, the new Assignment is only to ascertain the Place; the Rule must be discharged.

In the same Cause it was moved, that the Associate might correct his Minutes, by reducing the Costs of 40s. (which he had minuted) to 5s.

*Cur'*: It has been often held that the Statute 22 & 23 *Car.* II. *cap.* 9, does not restrain the Power of the Jury, but they may give what Costs they think fit, as in other Cases, it only restrains the Court from giving Costs *de Incremento*.

Hayward an Attorney *against* Denison.  
*Trin.* 11 & 12 *Geo.* II. 1738. [*Prac.*  
*Reg.* 438. *Barnes*, 410. *S. C.*]

*Thomson.*

Attachment of  
 Privilege should  
 have 15 Days  
 between the  
 Teste and Re-  
 turn. *Vid.*  
*Williams v.*  
*Faulkner, Prac.*  
*Reg.* 437,  
*Barnes*, 409,  
*S. C. Atkinson*  
*v. Taylor, Barnes*,  
 427.

A RULE *Nisi* was made for setting aside an Attachment of Privilege, issued the 21<sup>st</sup> of *January*, and returnable the 30<sup>th</sup> of *January*, because there were not fifteen Days between the Teste and Return.

On shewing Cause, the Counsel for the Plaintiff refer'd to the Statute 13 *Car.* II., *Stat.* 2, *cap.* 2, *f.* 6, and the Prothonotaries said they did not know that the Practice required fifteen Days between the Teste and Return, but that usually there were eight, and sometimes four Days.

*Curia*: If the Practice had warranted a Return in eight Days, then that would have been a Part of the Privilege; but as it is sometimes eight Days and sometimes four, nothing seems to be settled by the Practice; in the King's Bench their Practice has settled the Return of their Writs of *Latitat*, &c. at eight Days. The Common Law requires fifteen Days between the Teste and Return of all Writs; and if the Practice has not settled it otherwise, the Law ought to prevail in this as well as in other Cases.

The Rule was accordingly made absolute.

[150] Ellifon *against* Newton.

IN Abatement of the Writ, the Defendant pleaded, *That he was and is an Attorney, and therefore ought to be sued by Bill, and not by Writ.* To this Plea the Plaintiff demurred generally.

Plea of Privilege ill, as not saying *suit At-torn' tempore Impetrationis brevis Original'*.  
*Vid. Pease v. Parsons, 1 Salk. 1.*

On arguing the Demurrer, it was objected, on the Behalf of the Plaintiff, that the Plea does not say that the Defendant was an Attorney at the Time of the suing out the Original Writ.

For the Defendant it was insisted, that this is only Matter of Form.

6 Mod. 105, 106.

*Cur'*: It is Matter of Substance, let the Defendant answer over.

1 Vent. 154.

Penrice *against* Jackson. *Trin.* 11 & 12  
Geo. II. 1738. [*Prac. Reg.* 416.  
*Barnes*, 485. S. C.]

A MOTION to set aside a Verdict without Costs, and a Rule *Nisi*.

Verdict set aside, 24 Jurors being returned on the *Venire* and 48 on the *Habeas Corpora*.  
*Vid. Stat. 3 Geo. II. c. 25.*

The Defendant had made no Defence at the Trial, because the Sheriffs of *Worcester* had returned but 24 Jurors on the *Venire*, but finding their Mistake, had on the *Habeas Corpora* returned 24 more, so that the Defendant could not challenge the Array as insufficient at the Time of the Trial, nor have any other Redress of this Matter than by Motion.

*Curia*: Imperfect Returns may be helped by the Statute, but here the Fault is Matter of Fact, the Rule must be made absolute.



*Sellen against Chamberlain. Trin. 11*  
*& 12 Geo. II. 1738. [Prac. Reg. 400.*  
*Barnes, 444. S. C.]*

Motion to put  
 off a Trial  
 should be made  
 two Days be-  
 fore the Day of  
 Trial.

A MOTION was made to put off a Trial that was to come on the next Day, but refused, because such Motions by the Practice of the Court should be made at least two Days before the Day of Trial.

*Vid. Roberts v. Downes, ante, p. 98, and cases there cited.*

*Shipman against Thompson. Mich. 11 [151]*  
*Geo. II. 1737. [Prac. Reg. 268.*  
*S. C.]*

Where an Ex-  
 cutrix declares  
 in her own  
 Right, the De-  
 fendant cannot  
 set off a Debt  
 due from the  
 Testator.

THIS was a Case reserved at *Lincoln Assizes* for the Opinion of the Court on the Construction of the Stat. 11 Geo. 2, cap. 19, sec. 15. The Case was the Plaintiff's Husband, to whom she was Executrix, had, by Letter of Attorney, appointed the Defendant his Steward; the Defendant received of the Tenants several Sums of Money for Rent after the Testator's Death. The Plaintiff brought this Action in her own Name, and not as Executrix, for the Money so received, as received to her Use; Notice was given to set off against the Plaintiff's Demands certain Sums that were due from the Testator to the Defendant; but at the Trial the Defendant was not admitted to set off what was due from the Testator to him, because the Plaintiff had not declared as Executrix, but in her own Right; and now two Questions were raised, First, Whether the Plaintiff ought not to have declared as Execu-

trix. Secondly, Whether the Defendant ought not to have been admitted to set off his Demands.

*Curia:* Here are two Questions, which are in Effect but one; and the single Question is, Whether the Action be rightly brought?

Where a Cause of Action accreus after the Death of the Testator, it is most proper for the Plaintiff to sue without naming himself Executor, and it's such a Case as the Plaintiff, tho' named Executor, would be liable to pay Costs, in Case of a Nonsuit or Verdict, and it's doubtful whether the Plaintiff in this Case, should sue as Executrix, would not be liable to pay Costs on a Nonsuit, the Reason given in 1 *Salk.* 314 is a very bad one, and in 1 *Salk.* 207, 6 *Mod.* 92, 181 *S. C.*, it is said to be determined on another Point; as there is nothing in the Defendant's Objections, so the Plaintiff must have the Benefit of her Verdict. *Carthew, 335.*

Bennet *against* Skinner. *Idem against*  
Sydenham. *Mich.* 12 *Geo.* II. 1738.  
[*Barnes, 320. S. C.*]

ON a Motion to set aside an Outlawry, the Court held that the Defendant's own Affidavit of his being a visible Person, without a like Affidavit by his Neighbours, is not a sufficient Foundation to set aside an Outlawry.

What Proof of Defendant's being a visible Person necessary to set aside an Outlawry.

*Watson against Lewis. Mich. 12 Geo. [152]*  
 II. 1738. [*S. C. Prac. Reg. 418 and*  
*Barnes, 485, called Watson v. Wallis.*]

Venue not to  
 be changed in  
 an Action on a  
 promissory Note  
 only. *Vid.*  
*Ward v. Col-*  
*clough, ante, p.*  
 119.

**M**OTION to make a Rule absolute for altering  
 the Venue from *Middlesex* to *Surry*; but on  
 producing the Declaration it appeared to be an  
 Action on a promissory Note only; therefore the  
 Rule was discharged.

*White against Washington. Mich. 12*  
*Geo. II. 1738. [Prac. Reg. 347.*  
*Barnes, 411. S. C.]*

Proceedings set  
 aside for Irregu-  
 larity in Pro-  
 cess, and Rule  
 for Attorney to  
 shew Cause why  
 he should not  
 pay the Costs.

See *Stat. 5 Geo.*  
*I. c. 13, as to*  
*Errors in Writs.*

**M**OTION to set aside the Proceedings against  
 the Defendant for several Mistakes in the  
*Capias* and Copy served, *viz.*, First, In the Direction  
 to the Sheriff, the Word *To* was left out. Secondly,  
 The Word *Take* omitted. Thirdly, *The* instead of  
*She*, and Fourthly, In the Notice it was for the 20th  
 of *October*, without saying next or this Instant,  
 which Mistake alone, it was insisted, would have  
 been fatal, had the *Capias* been Right. A Rule  
*Nisi* was made, and on shewing Cause it was argued  
 for the Plaintiff, that the Defendant did not come in  
 Time, the Declaration being filed, and a Rule given  
 to plead.

*Curia*: This is a very great Negligence of the  
 Plaintiff's Attorney in not making the Process right,  
 and an Offence to the Court, in making their Process  
 erroneous, especially where the Chief Justice is the

Witnefs. The Application is not too late, it may be any Time before Judgment. Let the Rule be made absolute, and another Rule granted againft the Plaintiff's Attorney, to fhew Caufe, why he fhould not pay the Cofts of the Proceedings, Motions, &c., on both Sides, occafioned by his Miftakes.

*Doe againft Lufhington, on the Demife of Godfrey. Mich. 12 Geo. II. 1738. [Prac. Reg. 180. Barnes, 78. S. C.]*

**M**OTION for Leave to take out Execution after Error in Ejeftment, and Rule *Nifi*. On fhewing Caufe, the Queftion was, Whether Bail by two Strangers for the Tenant in Pofteffion be fufficient Bail on Error in Ejeftment, the Statute 16 & 17 Car. II. c. 8, f. 3, requiring that the Plaintiff in Error in fuch Cafe fhould himfelf enter into the Recognizance. For the Tenant it was infifted, that it had been the Practice to put in other Bail, that if good Bail be put in, it's fufficient and answers the Intent of the Statute, and that as Bail in Error [153] cannot be put in before a Commiffioner in the Country, the Inconvenience would be great, for the Plaintiff to make a Journey from the furtheft Part of the Kingdom, when the Purpofe may as well be answer'd without it.

On the other Side it was faid that the Tenant of the Land was the beft Security, and the Words of the Statute require his becoming bound in the prefent Cafe.

*Cur'*: The Practice of taking other Bail hath expounded this Statute, and there is no Incon-

What Bail on Error in Ejeftment. *Vid. Goodtitle v. Bennington, ante, p. 142.*

*Cartbew 121.*

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venience as the Security is bettered; and tho' this Construction is not within the Letter, it is within the Equity of the Statute, and it's so settled by the Practice of all the Courts; the Rule must be discharged.

### Clarke *against* Swift.

Double Pleas.

**M**OTION for Leave to plead double, *Non Assumpsit* and a Cross Demand, and granted.

This was not opposed.

*Stibbs against Neeves, Prac. Reg. 315, Barnes, 336, S. C. Borret, In Trespass, the Court gave Leave to plead, Not guilty and Liberum Tenementum.*

*Jones against Body, Prac. Reg. 312, Barnes, 343, S. C. Leave given to plead Non Assumpsit and the Defendant's Discharge under the Insolvent Debtors Act; and Lisle against Jennyns the same Term, Non est factum, and the Defendant's Discharge under the said Act.*

*Baynes against Lutwich, Prac. Reg. 316, Barnes, 340, S. C. Leave given to plead a Distress for Damage-feasant, and for Rent in Arrear. And Church against Fendall, Prac. Reg. 315, Barnes, 339, S. C. Damage-feasant, and under a Demise from Defendant to Plaintiff. And Bird against Spinks, Barnes, 338. Leave to plead, that Plaintiff in Replevin had no Property, and a Justification as a Distress for Rent.*

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*Wibetcb against Fryar, Barnes, 332.* A Motion by an Heir for Leave to plead *Sokvit ad diem* and *Riens per descent*, and granted.

N. B. In the report of this case in *Barnes, 332*, leave was not granted for want of an Affidavit.

*Heathfield against Allen.* Leave given an Executor to plead *Non Assumpsit* and *Plene Administravit*.

N. B. In the reports of this case in *Prac. Reg. 311* and *Barnes, 332*, a contrary decision was given by the Court, as there was no Affidavit.

[154] *Note*; Affidavit must be made by the Executor or Administrator, that he hath fully administered, and by the Heir, that he hath nothing by Descent, before Motion.

The following double Pleas have been denied as Contradictory. Contradictory double Pleas.

*Non Assumpsit* and a general Release. *Gibson against Cole, Prac. Reg. 311, Barnes, 328, f. c.*

In Trespass, *Liberum Tenementum*, and a Justification in removing a Nuisance. *Halsey against Feltham, Barnes, 329.*

To an Action against an Innkeeper for detaining a Horse, Not guilty, and an Accord and Satisfaction, *Dursley against Cole, Prac. Reg. 314, Barnes, 329, f. c.*

In Trespass, Not guilty, and a Justification. *Barnet against Greaves, Barnes, 339.*

*Buck against Warren, Barnes, 339, Non Assumpsit* and *Non Assumpsit infra sex annos* denied, after Money had been brought into Court; the same

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denied after the Defendant had pleaded singly *Non Assumpsit*, *Nevil against Fisher*, *Barnes*, 338.

*Nil habuit in Tenementis* may be given in Evidence, on a Plea of *Nil debet*. *Marshall against Lawrence*. *Prac. Reg.* 314, *Barnes*, 333, *f. c.*

Motion to plead Double may be made any Time before Judgment. *King against Boswell*, *Barnes*, 329.

*Leighton against Leighton*, *Barnes*, 338. Leave given to plead double after a Judge's Order for Time to plead, the defendant pleading issuable pleas and taking short notice of Trial.

*Note*: In *Jarrat v. Robinson*, *Prac. Reg.* 312, leave to plead the General Issue, and a mutual debt was denied, as being contradictory.

*Horsfull against Greenwood and others.* [155]  
*Hil.* 12 *Geo.* II. 1739. [*Barnes*, 127.  
*S. C.*]

Defendant may waive his special Plea, and plead the general Issue the same Term, without Costs.

THE Defendants, in *Hilary* Vacation, pleaded several special Pleas, but in the same Vacation, before Replications were delivered, withdrew those Pleas, and pleaded the general Issue.

*Per Cur'*: After a special Plea pleaded, tho' the Plaintiff has prepared his Replication, yet the Defendant may the same Term, before the Delivery or filing of the Replication, waive his special Plea, and plead the general Issue without paying Costs.

[*Vid. Robinson v. Simonds*, *Prac. Reg.* 302, *Anon. Prac. Reg.* 303. *Martindale v. Galloway*, *Prac. Reg.* 304.]

Plumb *against* Savage and Wife, on the Demise of Bryan. *Trin.* 12 & 13 *Geo.* II. 1739. [*Barnes*, 180. *S. C.*]

**M**OTION for an Attachment for Contempt, and Rule *Nisi*.

Landlord made Defendant, and Tenant delivers Possession, no Contempt.

The Case was, a Declaration in Ejectment had been delivered to the Tenant in Possession, but he refusing to appear, *Savage* and his Wife were admitted to defend, pursuant to the Stat. 11 *Geo.* II. c. 19, s. 13, and after they had pleaded, the Tenant (just before the Expiration of his Lease) delivered the Possession to one *Reeves* on the Behalf of the Lessor of the Plaintiff; thereupon the Defendants obtained this Rule against the Lessor and his Attorney, for gaining the Possession in this Manner, and then not proceeding in the Cause; but on shewing Cause both the Lessor and his Attorney denied any Practice with the Tenant.

*Curia*: This is no Contempt, the Rule must be discharged.

Walsh, Assignee of the Sheriff of *Middlesex*, against *Haddock*.

**T**HE Defendant became Bail to the Sheriff for the Appearance of *W. R.* at the Return of the Writ, Bail was filed above, but excepted to, and that Exception entered on the Bail-piece. Afterwards without any complete Justification, the Plaintiff delivers his Declaration generally, and proceeded to Issue, Trial and Judgment, and then brings this

Exception to Bail waived by proceeding in the Original Cause. *Vid. Busby v. Walker, ante, p. 55, and cases there cited.*



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Action; to which the Defendant pleaded *comperuit ad diem*, and in order to maintain that Plea, the Court was now moved for Leave to strike out the Exception on the Bail-piece, that it might be filed, insisting that the Proceeding generally was a Waiver of the Exception. [156]

*Curia*: Let them shew Cause.

[If a Plaintiff after having excepted against Bail, calls for a Plea, that is a waiver of the exception, and admits the Defendant to be in Court and in a condition to plead; but this is not so where no Bail at all has been put in, and a Plea has been called for by mistake. *Frith v. Clark*, C. B. Trin. 18 Geo. III.

*Vid. Lister v. Wainhouse, Barnes, 92.*]

Webb, Administrator of Ruffel *against*  
Spurrel. *East. 12 Geo. II. 1739.*  
[*Barnes, 259, 261. S. C.*]

Action by an Administrator on a Judgment signed in the Life of the Intestate, but not entered on the Record.

THE Plaintiff's Intestate in *Trinity Term 10 Geo. II.* obtained a Verdict against the Defendant, and the now Plaintiff brought an Action on that Judgment. The Defendant, in *Hilary Term* last, pleaded *Nul tiel Record*, and now moved to stay the Entry of that Judgment, Affidavit being made that no such Judgment was actually entered on Record within two Terms after the Verdict, according to the Stat. 17 *Car. II. cap. 8.* A Rule *Nisi* was granted.

On shewing Cause, it was argued for the Plaintiff, that tho' the Judgment was not entered on the Record according to the Statute, yet it appeared, by the *Postea* and the Prothonotary's Book, to have been signed the 19th of *October*, and therefore was a

Judgment of *Trin.* 10 *Geo.* II. that it is the Duty of the Clerk of the Judgments to enter the Judgment, he being paid for it, at the Time of signing, tho' they are seldom entered till wanted; that as the signing Judgment is the Act of the Court, it is supposed to be entered *instante*; and that it is the Course of the Court to enter Judgments of the Term they are signed.

The Court said this Practice might be of ill Consequence to Purchasers and others, but enlarged the Rule.

*Note*; The Plaintiff's Attorney, on signing final Judgment had taken away the *Possea*, and had not brought it back to the Office till within some few days before the Motion. The Court, to the Intent the Clerk of the Judgments might not, by such practice, for the future be hindered from entering Judgments immediately on Record, and to prevent Inconveniences to Purchasers and others, in searching the Prothonotaries Books, made a general Rule, *That from and after the last Day of this Term, all Posseas and Inquisitions whereon final Judgments are signed, should immediately be left with the Clerk of the Judgments.*

*Vid. Trin.* 13,  
*Geo.* II. *reg.* 2.

[157] Creak and Creak, Administrators, *against*  
Pitcarne. *Trin.* 13 *Geo.* II. 1739.  
[*Prac. Reg.* 118. *Barnes*, 127, 129.  
*S. C.*]

THE Plaintiffs as Administrators of *J. C.* were sued in the Consistory Court of *Norwich*, for Tithes of some Marshes due from the Intestate in his Life-Time, whereupon they alledged a *Modus*, and here obtained a Prohibition, with Directions forthwith to declare, in order to try the Merits of the Suggestion; the Plaintiffs accordingly did declare,

No Costs payable by an Administrator on a Nonsuit upon a Prohibition obtained by him. *Vid. Lamley v. Nichols, ante, p.*

## 238 *Cases of Practice in the*

14, and cases  
here cited.

and the Defendant after denying his Proceeding in the Court below, after Prohibition delivered, for Consultation alledges that there is no such *Modus*, and thereupon Issue is joined; at the *Lent Assizes* for *Suffolk* 1738, the Defendant having given due Notice of Trial, enters the Record; and the Cause being called, the Plaintiffs were nonsuited without offering any Evidence. Upon this the Defendant being intitled to Judgment, and a Consultation, applies to the Prothonotary to tax his Costs; but that being opposed by the Plaintiffs, and the Prothonotary desisting, the Court was now moved by the Defendant for Directions in taxing the Costs in this Suit and the Costs of the Suggestion, six Months being elapsed since the granting of the Prohibition, and the Suggestion being not proved.

For the Defendant it was insisted, First, That as this Suit arose since the Death of the Intestate, they are to pay Costs, for the same Reason that Plaintiffs in Trover or other Actions arising in their own Time are not excused from Costs. Secondly, That they are in this Case to be considered as mere Defendants, this Suit being commenced only to stop the now Defendants Proceeding against them in the Court Christian, where they were mere Defendants, Executors, Administrators, when Defendants being in all Cases liable to Costs on Judgments given against them.

Thirdly, That there is no Exception in Favour of Administrators in the Stat. 2 & 3 *Ed. VI. cap. 13, f. 14*, therefore the six Months being elapsed, and no Proof made of the Suggestion, the now Defendant is intitled to his double Costs.

Fourthly, That the Plaintiffs not appearing or attempting to prove the *Modus* in the present Case,

were nonsuited by their own wilful Default, and in all Cases of wilful Defaults in Executors or Administrators, as not going on to Trial pursuant to Notice, suffering Judgment for want of a Replication or the like, they are always liable to Costs, ever [158] since the Stat. 23 *H. 8, cap. 15*, and this very Point had been so settled in the King's Bench, *Hil. 4 Geo. I. Willis against Brown*.

Fifthly, That if Executors and Administrators being Plaintiffs in Prohibition are never liable to Costs upon a Judgment against them, then every Man had better give up his Right to Tithes due from them, than commence a Suit in the Court Christian, and expose himself to their Mercy, at the Hazard of being put to twice as much Charge as the Tithes may be worth, without being reimbursed any Part thereof, if a Prohibition should be applied for.

For the Defendant it was insisted that the Stat. 8 & 9 *W. III., c. 11, f. 5*, has an express Proviso in favour of Executors and Administrators; that this being a Demand for Tithes during the Life-Time of the Intestate, the Plaintiffs could not be sued but as Administrators, and though the Suit in Prohibition was commenced since the Death of the Intestate, yet it was merely to protect the Assets, as in Cases of Writs of Error brought by Executors or Administrators, they pay no Costs, and that when a Plaintiff in Prohibition is ordered to declare, he is excused from making Proof of his Suggestion, pursuant to the Stat. *Ed. 6*, the Proof being to be made at the Trial *Per Pais*.

*Curia*: The Defendant is intitled to no Costs in this Case.

*Barnes against Ward. Mich. 13 Geo. II.*  
1739. [*Barnes, 42. S. C.*]

Warrant to  
confess a Judgment  
executed  
by a Prisoner  
must be in the  
Presence of an  
Attorney on  
his Behalf.

**M**OTION to set aside an Execution; the Case was, the Defendant being in Custody at the Plaintiff's Suit, executed a Warrant of Attorney to confess Judgment, having first sent for Mr. ———, an Attorney, or his Clerk, to come and assist him; the Clerk actually attended, but he not being then a sworn Attorney, tho' he had served his Clerkship and was admitted before Motion made, the Court held that the Execution of the Warrant of Attorney was irregular, the Presence of a sworn Attorney being necessary, pursuant to the Rules of the Court. It was thereupon prayed that the Rule might be enlarged, in Order to get an Affidavit, that the Plaintiff's Attorney was present; his Counsel apprehending that that would be sufficient; the Rule was accordingly enlarged, but afterwards made absolute, and the Prothonotary directed to settle Satisfaction for such Effects as could not be restored in Specie. [159]

[Motion to set aside a Judgment for Irregularity, the Warrant of Attorney being obtained whilst the Defendant was under arrest, and no Attorney present at the time on his behalf. The Plaintiff's Attorney swore that he advised the Defendant to have an Attorney present but he refused and requested the Plaintiff's Attorney to act for him as well as for the Plaintiff, which was done, but the Master reported the case to the Court, and then Judgment was set aside as being irregular and a gross evasion of the Rule of Court.

*Between Bowen v. Hinks, B. R. Mich. 30 Geo. II.]*

Anonymous.

**M**OTION to change the Venue, and Rule *Nisi*. On shewing Cause it was insisted for the Plaintiff, that tho' the Rules for pleading were not out at the Time of the Defendant's Motion, yet as he had gained Time by Application to a Judge for an Imparance from *Trinity* Term last, he ought not now to move to change the Venue; *econtra* it was said that whether an Imparance had been had or not, yet at any time before Plea pleaded, tho' the Rules for pleading are out, the Defendant may move to change the Venue, unless he had applied for Time to plead, and in that Case the Court would not suffer him to make use of that Indulgence to the Plaintiff's Prejudice.

Defendant may move to change the Venue after Imparance.

*Curia*: The Imparance in this Case was no more than the Defendant was intitled to; the Rule must be made absolute.

*Vid. Blackstock v. Payne, Prac. Reg. 425. Barnes, 487, on same point.*

Robinson *against* Tuckwell. *Mich. 13 Geo. II. 1739.* [*Barnes, 203. S. C.*]

**A** MOTION to set aside an Execution executed after a Writ of Error allowed, and a Rule *Nisi*.

The Case was, the Plaintiff having obtained a Verdict and Judgment for Costs, the Defendant sued out a Writ of Error; and pending that Writ, the Plaintiff brought an Action of Debt on the Judgment, and after Judgment thereon took out an Execution, and got it executed without Leave of the

Defendant on Judgment after Error brought and Judgment thereon, Plaintiff may take out Execution.

Court. And now on shewing Cause it was insisted that the Plaintiff might proceed as he has done, unless the Defendant had obtained a Rule for staying Proceedings upon his confessing Judgment; which Rule he might have had for asking; but having not done so the Plaintiff's Execution is regular, and ought not to be set aside; the Case of *Humphrys and Daniel*, ante, p. 129, being a Determination in Point.

*Curia*: The Rule must be discharged.

*Palmer against Sir James Edwards.* [160]

Words not Actionable, Judgment arrested after Verdict.

IN an Action for Scandalous Words spoke of a Justice of the Peace, viz. 1. *You robbed the Poor, and are worse than a Highwayman.* 2. *You Villain, you have robbed the Poor, and are worse than a Highwayman.* 3. *You Villain, you have robbed the Poor.* 4. *You are worse than a Highwayman.* A general Verdict was given for the Plaintiff, and 5*l.* Damages; Motion in Arrest of Judgment, and Rule *Nisi*. On shewing Cause two Counsel were heard on each Side, and many Cases cited.

*Curia*: There is not much Difficulty in this Case, but there is no End of Citing and answering Cases; to bear an Action, Words must have a certain Signification, must so reflect upon a Person, that if true he might be liable to some legal Punishment, or if from the speaking some particular Damage does accrew, or is likely so to do, and Costs or Damages, or upon a *Colloquium* of his Trade. The Plaintiff here is said to be a Justice, yet no special Damage laid in this Case; the Office of Justice of the Peace is not so considerable but that many People choose to

decline it. Villain alone has never been held to be actionable; indeed in the Case of *Scandalum Magnatum* the Rules are very different. Robbing a Word of uncertain Signification, which Uncertainty is rendered greater by the Words annexed, robbed the Poor, what Poor and when? The Words therefore, Villain and robbed the Poor not being actionable, and the Verdict general, if one Set are bad, the Judgment must be arrested as to the Whole. Worse than a Highwayman is very uncertain, for a Papist will say so of any Protestant, and it has been said by some Protestants of others, only in Regard to their Religious Differences; Judgment must be arrested.

## AN ADDITIONAL CASE.

*Easter Term 20 Geo. II. 1747. Common Pleas.*

Baskerville, *Esq*; Plaintiff, and Chaffey, Defendant, In Error. [*Barnes*, 99. S. C.]

PLAINTIFF gave Notice that Bail was put in, who were *J— C—* of Crown Court, Fleet Street, Woolstapler, and *D— S—* of Blackhorse Alley, Fleet Street, Cooper, who wou'd justify in Court on the Saturday following (which was May 30) Serjeant *Hayward* opposed their Justification, for that they had but just before (*viz.* the same Morning) justified for 60*l.* in another Cause; and that by the

Bail in Error justified by a Marshal's Court Officer, and said not to be within the 7th Rule of Court, *Mick.* 6 G. II.



Notice in his Hand, one called himself of *Crown-Court*, Woolstapler, and the other of *Blackhorse-Alley*, Cooper; Whereas it appeared by the Affidavit of the Defendant's Agent, that he went to *Crown-Court*, and no such Person as C——, a Woolstapler, lived there, but one C——, a Bailiff or Follower, lived in *Hanging-Sword-Alley*, and that on searching at the Marshal's Court Office he found C——, to be an Officer of that Court: And he also inquired in *Blackhorse-Alley* after S——, a Cooper; several of the Neighbours said they knew no such Person in that *Alley*, and there was no Cooper there, unless the Man at such a House was a Cooper, who proved to be the Person, and referred to a Neighbour for a Character, who said he would not trust him Two-pence, he had no visible way of Living, except that his Wife took in Washing, and he sometimes went of Errands; and that from all the Circumstances of the Inquiry the Defendant's Agent believed that both of the Bail were common or hired Bail, and not sufficient Bail upon the Writ of Error in this Cause. The Court added the 60*l.* which they had justified for before, to 200*l.* for which they were Bail in this Cause; each of them swore he was worth the Money after his Debts paid, and that he had a Freehold Estate, one lay in *Gloucestershire* and the other near *Rygate* in *Surry*, so that the only Objection remaining was, Whether C—— being a Marshal's Court Officer, was within a Rule of this Court made *Mich. 6 Geo. II.* whereby (for the Reasons therein mentioned) it is ordered that, *no Sheriff's Officer, Bailiff, or other Person concerned in the Execution of Process, shall be Bail in any Action or Suit depending in this Court*: The Prothonotary was asked, If he ever knew an Instance where a Marshal's

Court Officer was refused to be Bail ; he said, No, but he knew no Reason why they should not as well as Sheriff's Officers : But the Court (the Chief Justice absent) admitted the Bail as not being within the before-mentioned Rule. .

See *Gwinnett v. Procter*, *Pratt. Reg.* p. 73, where hired Bail was committed to the *Fleet Prison*.

*Note ;* In *Filewood v. Smith*, *Barnes*, p. 110, the doctrine laid down in *Baileysville v. Chaffey*, was exploded, and it was held that a Palace-Court Officer could not be bail, as the 7th Rule of Court made in *Mich. 6 Geo. II.* extended to all Bailiffs, Officers, and others concerned in the execution of Process.

And it was said in *Bolland v. Pritchard*, 2 *W. Black*, 799, that no Sheriff's Officer of any kind, could be special Bail, and the Court referred to the rule of *Mich. 6 Geo. II.* as one founded upon principles of prudent jealousy, so the very letter of it should not be broken. Semble that the fact of Bail living within the verge of the Court, will not of itself, without other suspicious circumstances, be sufficient objection. *Glead v. Mackay*, 2 *W. Black*, 956.







# A TABLE TO THE CASES OF PRACTICE IN THE COURT OF COMMON PLEAS.

## *Abatement.*

See *Amendment.* 4.

*Attorney.* 5.

*Costs.* 30.

*Plea.* 2, 6, 23.

1.



PLEA in Abatement ought to be pleaded within four Days after the Declaration delivered, or left in the Office. *Page* 95

2. When the Declaration is delivered solate in the Term, that the Defendant is not obliged to plead that Term, he must, within the first four Days of the next Term, apply to the Prothonotary for a special Impar lance. 116

3. A Plea in Abatement is not to be received without an Affidavit. 132

4. Plea of Privilege by an

Attorney held to be ill, not saying *Fuit attorn' tempore impetrationis brevis originalis.*

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## *Actions.*

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## *Administrator.*

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## *Affidavit.*

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*Ejectment.* 4, 5.

*Outlawry.* 7.

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*Trial.* 6, 7.

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2. Judgment amended by striking out *Attach' fuit*, and inserting *Sum' fuit*. 18

3. A Recital in a Declaration amended after Issue joined. 42

4. A Plea in Abatement not amendable. 47

5. Warrant of Attorney amended after Error brought with Costs to the Plaintiff in Error, if he should not proceed. 68

6. Entry of Bail in a Filacer's Book, ordered to be amended. 110

7. Recognizance amended, and made agreeable to the Writ. Page 110

8. Amendment of an Issue of *Null tiel Record*, by the Writ of *Scire facias*. 113

9. Issue amended. 160

10. Amendment of a Record by striking out the Entry of a View denied, there being nothing to amend by. 198

11. *Jurata* amended. 152

12. *Avowry* amended after Argument on Demurrer. 223

13. Amendment of Writ of Entry. 18

14. Amendment of Warrant of Attorney. 19

### *Antient Demesne.*

See *Plea*. 7.

### *Appearance.*

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*Baron and Feme*. 2.

*Irregularity*. 3.

*Outlawry*. 1.

1. The Plaintiff may enter an Appearance for the Defendant the Day after the Appearance-Day of the Return of the Writ. 72

2. Where the Plaintiff enters an Appearance for the Defendant, he is not obliged to take Notice of any Attorney the Defendant employs. 175

3. Upon Appearance to the *Exigi facias*, the Defendant must plead *instante*. 32

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Court, on the Return Day are  
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*Bail.* 1, 23.

*Contempt.* 1.

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ment, except for Non-payment  
of Costs, will not be received  
on the last Day of Term. 77

2. If Interrogatories be not  
filed in four Days, the De-  
fendant must move for his  
Discharge, or he will be still  
liable to answer. *ibid.*

3. Attachment against the  
High-Sheriff, the Rule being  
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4. An Attachment granted  
against the Sheriff on Service of  
a Rule, upon one who acted  
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5. An Attachment return-  
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6. An Attachment is not  
grantable on a Quaker's Affir-  
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7. Attachment against a  
Bailiff for retaking the De-  
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*Attorney.*

See *Abatement.* 4.

*Appearance.* 2.

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1. A Bill against an Attor-  
ney is to be called thrice in open  
Court, then entered with the  
Prothonotary; a Rule for Ap-  
pearance to be given with the  
Secondary, the Bill to be filed  
with the Prothonotary till the  
Rule is out, and then with the  
*Custos Brevium.* Page 7

2. An Attorney's subscribing  
a Bill filed against him, is only  
an Undertaking to appear,  
which he must actually do in  
the Prothonotary's Remem-  
brance, and on an Application  
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do it. 98

3. An Attorney sued as Ex-  
ecutor, Administrator or Bail,  
has no Privilege, but may be  
sued as a common Person. 96

4. An Attorney forejudged,  
suing a Writ in his own Name,  
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5. Where an Attorney is  
arrested on Process out of a  
superior Court, he must plead  
his Privilege *Sub pede sigilli*;  
if on Process out of an inferior  
Court, his Writ ought to be  
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9. An Attorney, arrested whilst attending the Execution of an Inquiry, discharged. 154

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11. An Attorney taken in Execution, when attending on a Judge's Summons, discharged. 213

12. Even before the Stat. 2 *Geo. II.* an Attorney could not bring an Action for Fees till a Bill was delivered, by the Stat. 3 *Jac. I.* 43

13. The Administrator of an Attorney may commence a Suit without delivering a Bill, and the Bill is not liable to be taxed. 87

14. A Bill not signed is not liable to be taxed. 91

15. After Bond given, Attorney's Bill not to be taxed. 165

16. An Attorney's Bill cannot be taxed after an Action brought, and Writ of Inquiry executed. 178

17. An Attorney allowed the Cost of taxing his Bill, only a ninth Part being taken off. 116

18. An Entering Clerk of the Court allowed to be Bail. 67

19. An Attorney of this Court cannot be Bail without the Plaintiff's Consent; but an Attorney of another Court may. *Page* 96

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20. An Information against an Attorney for practising, after being convicted of Subornation of Perjury. 52

21. When an Attorney undertakes to appear and plead for the Defendant, the Court will compel him to appear; but a Plea must be demanded in Writing. 99

22. Proceedings transacted in the Country not to be set aside after Judgment. 165

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*Outlawry.* 2.  
*Refcous.* 4.  
*Sci. fa.* 1, 2, 4.

1.  
**T**HE Sheriff cannot take a Bail-Bond to an Attachment out of Chancery. *Page 25*  
 2. Additional Bail struck out, where put in without Defendant's Knowledge, on purpose to have Defendant in his Power to surrender. 30  
 3. In an Action on a Recognizance against Bail the Plaintiff need not sue out a special Writ; a *Clausum fregit*, with an *Ac etiam* in Debt, is sufficient. 31  
 4. In such Action the Defendant should be arrested four Days at least before the Return of the Writ, that he may have Time to render the Principal. *ibid.*  
 5. On an Action upon the Recognizance against Bail, they have till the Rising of the Court on the Appearance-Day of the Return of the Writ to render the Defendant. 38  
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20. After a Declaration delivered in the original Action, the Plaintiff cannot proceed on the Bail-Bond. 120

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24. Defendant held to Bail in Trespass, for taking and carrying away Plaintiff's Hoppoles. 160

25. An Action on the Recognizance cannot be brought against the Bail, if a Writ of Error be depending in the original Action. 169

26. A *Redditi* so entered in the Judge's Book held good, the Plaintiffs having got away the Bail-piece to file. 185

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30. Exception to Bail waived by Proceeding on the original Action. 235

31. Bail in Error justified by a Marshal's Court Officer, and said not to be within the Rule of Court. 243

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### *Baron and Feme.*

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*Prisoner*. 8.

1. On Judgment against Baron and Feme both must surrender in Discharge of the Bail, and the Wife cannot be discharged. 79

2. In an Action against Baron and Feme, if only the Wife be arrested, she shall be discharged on a common Appearance; but if both be arrested, both shall be held to Bail. 176

### *Battery.*

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### *Bills against Attornies.*

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*Causes.*

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*Heir.*

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*Homine replegiando.* 1.

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1. Several Trespasses, *inter*

*alia*, for turning up the Soil with Ploughs, Damages found under forty Shillings, no Costs *de incremento.* Page 6

2. On an Action for Words, and Damages under forty Shillings no Costs allowed, though a special Justification had been pleaded. 36

3. In Trespass which concerns a Freehold, and an Assault and Battery joined, the Plaintiff shall have no more Costs than Damages. 39

4. In Trespass for an Injury done to a personal Chattel the Plaintiff shall have full Costs, though the Damages found be under forty Shillings. *ibid.*

5. In Trespass the Jury gave 3s. 4d. Damages, and 40s. Costs, and the Prothonotary allowed 6s. 8d. for the *Capiatur* Fine; held, that the Jury is not bound by the Statute, and the Prothonotary by 5 & 6 W. & M. is to allow the *Capiatur* Fine. 69

6. In Trespass where there is an Injury done to a personal Chattel, and no Freehold comes in question, the Judge need not certify, and the Plaintiff shall have full Costs, though Damages found be under 40s. 75

7. In Trespass where the Freehold might have come in Question, a Judge's Certificate is necessary, to intitle the Plaintiff to full Costs. 128

8. In Trespass where a Damage is done to a personal Chattel, the Plaintiff shall have full Costs, though Damages

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11. In an Action for Words and special Damages laid, Defendant shall have full Costs. 208

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13. An Executor, Plaintiff, shall pay Costs on a Non prois for want of a Replication. 26

14. Executors, Plaintiffs, nonsuited on a Trial upon a Promise made to the Testator, no Costs allowed. 34

15. If an Executor discontinue, he shall pay Costs. 117

16. Costs payable to a Defendant by a Rule of Court, on his Death are payable to his Executor. 170

17. An Administrator nonsuited on Trial in Trover, the Trover in the Intestate's Time, the Conversion in the Plaintiff's, he shall pay Costs. 93

18. No Costs payable by an Administrator on a Nonsuit, upon a Prohibition prayed by him. 237

19. In Prohibition the Plaintiff ought to have the Costs of the Suggestion itself, and all subsequent Costs. 19

20. On Judgment by Default in Prohibition the Plaintiff shall have a Writ to enquire of his Damages, and his Costs taxed from the Time the Rule or Prohibition was made absolute. Page 34

21. Where Judgment is for the Defendant on a Demurrer in a *Quare impedit*, he shall have Costs. 9

22. No Costs given by the Jury on a Verdict, but added by the Court. 14

23. Treble Costs allowed a Commissioner of the Land-Tax where the Plaintiff was nonsuited, though the Judge had not certified. 29

24. No Costs for not executing a Writ of Inquiry according to Notice. 129

25. Costs allowed to the Defendant on the Plaintiff's setting aside his own Writ of Inquiry. 138

26. On a Verdict for the Defendant, upon an Action for exercising a Trade contrary to the Statute, Costs allowed. 37

27. Where a Statute gives a Penalty to a Party injured he shall have Costs, *aliter* in Case of a common Informer. 129

28. In Formedon in Remainder, where Judgment is given for the Tenant on Demurrer, he shall have no Costs. 40

29. A *Prochein amy* shall pay Costs for not proceeding to Trial. 51

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32. Plaintiff paid Costs for not going to Trial, though the Defendant had entered a *Ne recipiatur*. 90

33. An Agreement to pay Debt and Costs, the Costs shall not be taxed as between Attorney and Clients. 102

34. On an Award to pay Costs, the Costs to be taxed shall be as between Party and Party, and not as between Attorney and Client, except there be a special Agreement. 104

35. No Costs on a *Sci. fa.* before the Defendant has pleaded. 109

36. The Charge of a Witness allowed, though the Judge would not permit him to be examined. 146

37. Costs on a Verdict for some of the Defendants, though the others let Judgment go by Default. 162

38. Costs of Repleader denied where the Plaintiff had proceeded to Trial on a Plea of *Non assumpsit*, to an Action of Trover. 174

39. The Charge of striking a special Jury is to be paid by the Party who applied for the special Jury, but the other necessary Charges are to be allowed. 210

40. No Costs on a Reference or *Remanet*. Page 210

41. Jury not bound as to Costs by the Statute of 22 & 23 Car. II. 225

42. Costs refused under Stat. 3 Jac. I. c. 15, the Defendant having waived his right to them. 105

43. Motion to tax Plaintiff's Bill of Costs refused, the Defendants having given a Bond for the Money. 165

### Countermand.

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### Custos Brevium.

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### Declaration.

See *Alias dist.*

*Amendment*. 3.

*Attorney*. 6.

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*Clausum fregit*.

*Homine replegiando*. 1.

*Notice*. 27.

*Plea*. 22.

*Prisoner*. 2, 3, 4, 6, 13.

*Replevin*. 2.

1.  
DEFENDANT'S Attorney bound to receive a Declaration by the By, at the Suit of the same Plaintiff, but not at the Suit of another. 12

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2. On a special Writ the Plaintiff cannot declare by the By, till he has delivered a Declaration in the original Action.

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3. On Process at the Suit of the Husband only, he cannot deliver a Declaration by the By, at the Suit of himself and Wife.

199

4. But on Process at the Suit of Husband and Wife, the Husband may deliver a Declaration by the By at his own Suit only.

*ibid.*

5. The Time for pleading to a Declaration delivered *De bene esse* not settled.

28

6. Where a Declaration is left *De bene esse*, Notice thereof and of the Time to plead may be given to the Defendant.

83

7. On a Writ returnable the second Return of the Term, the Declaration may be delivered *De bene esse*, on the Effoin-Day of Return.

85

8. A Declaration may be delivered *De bene esse* on the Effoin or Return-Day, or on any Day after, though Rule to plead cannot be given till the first Day of Term.

102

9. On a Declaration delivered *De bene esse*, the Plaintiff cannot sign Judgment till the Time for Appearance is out.

127

10. A Declaration may be delivered before the Effoin-Day of the third Term, where the Defendant has not given a Rule

to declare at the End of the second Term.

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11. The Defendant may call for a Declaration the Term after the Return of the Writ, and sign a Non-pross for the want of it.

47

12. The Declaration ought not to be delivered to the Defendant when his Attorney is known.

51

13. The Plaintiff having entered an Appearance for the Defendant, delivered the Declaration and Notice to the Defendant, though after the Appearance he knew the Defendant's Attorney, held to be well delivered.

76

14. Where on an *Ac etiam* Writ the Plaintiff by declaring loses his Bail, he may declare in any Action or any County as on a *Clausum fregit*, and deliver as many Declarations the same Term against the same Defendant as he will.

88

15. Writ served on Defendant in *London*, and Notice of a Declaration and to plead in four Days left for him at his Lodgings in *London*, held good, though the Defendant dwelt in the Country, and lodged only occasionally in *London*.

89

16. Notice of a Declaration being left in the Office should set forth the Nature of the Action as Debt or Case, but need not set forth the Substance of the Declaration at large.

95

17. Notice that a Declaration upon a Note under Hand,

and for Goods sold was filed in the Office, held to be bad, not setting forth whether the Action was in Debt or Case. Page 102

18. When Judgment is set aside for Irregularity, a new Declaration must be delivered. 120

19. A Declaration left in the Office, and Notice given to the Defendant's Attorney, is the same as if the Declaration itself was delivered to him. 125

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21. Declaration delivered to the Attorney in the Country not good. 152

22. A Declaration shortened by the Court, and Costs paid by the Attorney. 193

23. A Declaration delivered to the Defendant, his Attorney not being to be found, held irregular. 194

24. The Plaintiff may have Leave to amend his Declaration, by adding new Counts any Time before the End of the second Term. 198

### Demurrer.

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*Money into Court.* 5.

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*Plea.* 23, 28.

1. Judgment given for the Plaintiff in Demurrer, though

neither Plaintiff nor Defendant had delivered the Paper-Books to the Puisse Judges. Page 37

2. The Cause should not be made a *Concilium* before the Demurrer-Book is tendred; but if it is, the Defendant must pay for the Book, or Judgment may be signed. 108

3. After a Rule given to rejoin issuably, the Defendant may demur. 168

4. Leave to withdraw a Demurrer in a particular Case, though the Plaintiff had lost a Trial. 214

### Distress.

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1. In Dower the Plaintiff must give a peremptory Rule to plead. 132

2. Grand Cape set aside because the Summons was not duly proclaimed. 174

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**F**IXING the Declaration on the Door of the Messuage, the Tenant's Wife shutting the Door after being acquainted

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with the Contents, not good Service. *Page* 111

2. A Declaration in Ejectment left on the Premises, where the Tenant refused to accept it, and threatened to shoot the Beares, held good Service. 151

3. Declaration delivered to the Father of the Tenant, who acknowledged the Receipt of it, good Service. 173

4. Judgment in Ejectment denied for Incertainty in the Affidavit. 163

5. What Affidavit is necessary on an Ejectment upon *Stat. 4 G. II.* 101

6. Vacant Possessions not within the Rule of *Trin. 32. Car. II.* 112

7. If the Rule annexed to the Plea be not stamp'd by the Filacer, the Plaintiff may sign Judgment. 106

8. The Landlord cannot make himself Defendant without the Tenant's Consent. 108

9. The Tenant cannot be compelled to defend, nor may the Landlord for him, without his Consent. 148

10. Landlord made Defendant, the Tenant delivers up the Possession. 235

11. The Lessor of the Plaintiff being poor, shall not be obliged to name a Plaintiff able to pay costs. 27

12. Judgment being for the Defendant in an Ejectment, where the Lessor of the Plaintiff was a Peeress, an Attachment

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13. Proceedings in Ejectment stayed on Payment of Rent in Arrear and Costs. 13

14. Proceedings in Ejectment stayed till the Lessor of the Plaintiff, being Lord of the Manor, delivered the Defendant a Copy of his Admission. 86

15. Notice to appear in the Beginning of the Term incertain. 163

16. Variance between the Issue delivered and the Record of *Nisi prius*, the Defendant confessing Lease, Entry and Ouster at the Trial, will not prevent his taking Advantage of the Variance. 166

17. Six Issues in Ejectment consolidated into one, the Appearance and Plea being joint. 179

18. What Bail in Error in Ejectment. 231

### *Entry (Writ of).*

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### *Error.*

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*Bail.* 6, 25.

*Ejectment.* 18.

*Non suit.* 3.

*Outlawry.* 2.

1. The Allowance of a Writ of Error is a *Supersedeas* from the Time of the Allowance,

though the Execution be executed before Notice. Page 55

2. A Writ of Error is a *Superfedeas*, even where the Execution issues before and is executed after the Allowance thereof without Notice. 61

3. A Writ of Error returnable before Judgment signed does not attach the Suit, and the Plaintiff may take out Execution. 77

4. Judgment by *Cognovit actionem* signed after the Return of the Writ of Error, Execution set aside, the Plaintiff's Attorney having promised to sign Judgment on a certain Day which was before the Return of the Writ of Error, but did not. 82

5. Plaintiff deferring to sign Judgment till the Return of a Writ of Error, though called upon, ordered to sue out a new Writ at his own Expense. 106

6. A Writ of Error returnable *Tres Trin'*, Judgment signed in Vacation following, and Execution thereon, held that the Writ of Error attached the Judgment, and the Execution set aside. 58

7. Writ of Error returnable before final Judgment signed does not remove the Record, the Plaintiff may take out Execution. 130

8. Judgment in Debt on a Judgment pending a Writ of Error in the original Action, the Plaintiff may take out Execution of course, unless stayed by Motion. Page 196

9. Leave granted to take out Execution, the Writ of Error being abated by the Death of the Chief Justice. 193

10. A Prisoner brought up by *Habeas Corpus* charged in Execution, though Writ of Error allowed. 201

11. Debt on a Judgment after Error brought, the Plaintiff may take out Execution, unless the Defendant moves to stay him. 241

12. The Writ of Error after the Record certified being quashed, the *Mittitur* was struck out of the Roll, and Execution awarded in *C. B.* 17

13. Judgment on a Bond, and Error brought, the Court on Examination finding it was a Bail-Bond, though not so mentioned in the Declaration, held that no Bail was required. 14

14. A Warrant of Attorney amended after Error brought. 19

15. A Rule set aside for filing a Warrant of Attorney for the Plaintiff after Error brought. 58

16. Judgment in Ejectment and Error brought; the Plaintiff in Ejectment may bring an Action for the *Mesne Profits*, and proceed to Judgment, but not to Execution till Error determined. 71

17. Error in Ejectment, Bail for a Year and a half's Rent



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and double Costs sufficient.

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18. Error after Verdict in Ejectment; Plaintiff in Error may either become bound himself, or find Sureties. 215

19. The Deputy *Custos Bre- vium* committed by the Court of King's Bench for returning that no Original was filed, though a common Original had been filed after a *Ne recipiatur* entered. 23

20. Motion to name a better Plaintiff in Ejectment denied. 27

### *Essoin.*

1. A Corporation aggregate not intitled to an Essoin in a personal Action. 16

2. No Essoin lies in any personal Action whatsoever, even where a Peer or Member of Parliament is Party. *ibid.*

### *Evidence.*

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1. Liberty granted to inspect the Publick Books of a Dean and Chapter, and to take Copies of them. 42

2. The Court refused to grant a Rule for an Officer to attend with Muster-Rolls, &c. 12

3. A Motion to inspect Court-Rolls and produce them at the Trial denied. 105

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### *Execution.*

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*Error.* 1 to 12, 16.

*Prisoner.* 9, 10.

1. *Fi. fa.* into *Middlesex*, and *Testatum* into *London*, the Form of the *Testatum* need not be inserted in the second Writ. 117

2. By Execution on a Judgment upon a Bond the Plaintiff may out of the Penalty levy the Interest and Costs, from the Judgment to the Time the Execution is completed. 134

3. Execution taken out after the return of a Writ of Error set aside. 113

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*Mutual Debts.* 2.

*Plea.* 19.

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### *Fees.*

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### *Fines.*

1. A Fine passed as acknowledged by Baron and Feme set aside as to the Wife, it being

found on a feigned Issue that the Wife did not acknowledge it. Page 21

2. A Fine acknowledged in Court by a Person that was deaf and dumb. 32, 38

3. A fine acknowledged five Years ordered to pass on Notice to the surviving Cognisor, one being dead. 110

4. A Fine allowed to pass though the Wife died the Day after the Caption, the King's Silver being paid. 113

5. Fines amended. 80, 183

*Formedon.*

See *Costs*. 28.

*Grand Cape.*

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*Habeas Corpus.*

See *Homine replegiando*. 3.  
*Prisoner*. 5, 11.

1.  
**T**HE Plaintiff cannot remove his Cause by *Habeas Corpus*. 9

2. A Sheriff allowed more than 12*d.* per Mile for bringing up a Prisoner who was a dangerous Person, and therefore an extraordinary Guard had. 17

3. A *Habeas Corpus* return'd on a *Sunday*, Prisoner committed the next Day. 164

4. The Court will not receive a Prisoner before the Return of the Writ. Page 164

5. A Prisoner brought up by *Habeas Corpus* at his own Instance remanded, because he refused to pay the Gaoler's Fees. 167

*Habeas Corpora.*

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An Heir may be sued by a *Clausum fregit*, and need not be named as Heir in the Writ. 16

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1. The Proceedings in a *Homine replegiando*. 61, 123

2. If the Plaintiff be nonsuited in a *Homine replegiando*, the Defendant shall have *Costs*. 61

3. Defendants taken on a *Capias in Withernam* brought into Court by *Habeas Corpus* and bailed. 123

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1.  
**N**O *Impar lance* tho' Plaintiff declared on several Batteries, tho' but one in the Writ. 74

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1. Leave granted to inspect the Public Books of the Dean and Chapter of St. Paul's. 42
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1. The Jury may give Interest on a Note from the Time the Money was lent. 66
2. On a Note payable a Month after Date, Interest ought to be given from the Expiration of the Month until the Commencement of the Suit. 70

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1. Motion to set aside an interlocutory Judgment for Irregularity, made the Day before the Writ of Inquiry was to be executed, denied, as coming too late. *Page 103*
2. After an Action brought on a Non-profs, and Judgment obtained thereon, too late to complain of the Irregularity of the Non-profs. 111
3. An Irregularity in the Plaintiff's appearing for the Defendant must be complained of before Judgment signed. 137
4. Irregularity in the Service of Process to be complained of before Judgment. 173
5. Motion to set aside a Judgment should be made two Days before the Execution of the Writ of Inquiry. 219

### *Issue.*

See *Amendment.* 8, 9.  
*Ejectment.* 17.

1. Plaintiff may sign Judgment for refusing to pay for the Copy of the Issue or the Demurrer-Book, except where the Defendant is a Prisoner, and no Attorney is concerned.

2. Replication not delivered in Term, nor Rule given to rejoin, but Defendant having agreed to accept the Issue as delivered, held he had waived the Form of the Replication, &c. Page 72

3. If the Declaration and Issue be of one Term, the Defendant shall not pay for two Copies of the Declaration. 136

4. Though the Issue be overcharged the Defendant must pay for it, and then may apply to the Court. 138

5. Judgment signed for not paying for the Issue set aside, it being tendred to the Attorney in the Country, and not to the Agent in Town. 140

### Judgment.

See Amendment. 1.  
Irregularity. 5.  
Verdict. 2.  
Slander. 2.

1. Judgment on a Warrant of Attorney cannot be entered after Defendant's Death. 13

2. Judgment by Warrant of Attorney may be entered after Defendant's Death, if he died after the first Day of the Term. 20

3. Judgment not to be signed for want of a Plea, and till the Afternoon of the next Day, after a Demand thereof in Writing. 31

4. Judgment cannot be signed

till the Afternoon of the Day after the Rule to plead is out.

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5. Judgment by Warrant of Attorney, within what Time to be entered. 103

6. Judgment set aside, the Demand of a Rejoinder being made on a former Agent concerned for the Defendant's Attorney, and not on the Agent concerned in the Cause. 105

7. Judgment of above a Year's standing must be revived by *Sci. Fa.* though the Plaintiff was tied up by an Injunction out of Chancery. 122

8. Warrant of Attorney to confess a Judgment by a Person in Custody, and no Attorney present, held to be good, he being an Attorney. 140

9. Judgment signed too soon waived without Motion. 187

10. A Nonprofs signed irregularly, and the Plaintiff intitled to Judgment, he may sign it without first setting aside the Nonprofs. 188

11. Judgment and Execution on a Warrant of Attorney taken of a Prisoner set aside, no Attorney for the Defendant being present. 194

12. Judgment on Warrant of Attorney of above two Years' standing entered, on Affidavit that the Defendant was alive. 220

13. No Motion to set aside Judgment on the last Day of the Term, if the Defendant could have applied sooner. 197

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 17. Judgment for not paying for Issue or Demurrer Book. 55  
 18. No Motion in arrest of Judgment the last day of Term without notice. 161

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 2. The Debt 21s. Damages 100s. the Damages give *Jurisdiction*. 118

### *Jury.*

See *Costs*. 5, 41.  
*Trial*. 10.

1. A Quaker fined for refusing to be sworn on a Jury. 156  
 2. The Charge of striking a special Jury are to be paid by the Party who applied for the special Jury, but the other necessary Charges are to be allowed. 210

### *London.*

**D**EFENDANT an Inhabitant in *London*, and Debt under 40s. a judgment having been signed and set aside on Terms of going to Trial, the Benefit of Costs by *Stat. 3 Jac. I. c. 15*, is waived. Page 105

### *Marshal of the Marshalsea.*

See *Prisoners*.

### *Mittitur.*

See *Error*. 12.

### *Money, &c. paid into Court.*

1. Money paid into Court by an Executor delivered again to him out of Court, the Plaintiff being nonsuited; *aliter* if he had not been an Executor. 10  
 2. If the Plaintiff be nonsuited after Money paid into Court, the Defendant shall not have it back. 56  
 3. On an Ejectment, Motion to bring 100l. into Court, to answer a Fine, denied. 66  
 4. In Trespass and Assault, and for taking away 1s. Motion to bring the Shilling into Court. 71  
 5. The Defendant shall not pay Money into Court on one Promise and Demurrer to another. 73  
 6. Six Shillings and three Pence paid into Court, and

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Verdict for the Defendant allowed to take it out, in part of his Coſts. *Pages 82, 177*

7. In Trover a Note brought into Court. 89

8. Money cannot be paid into Court after Judgment ſet aſide, on Payment of Coſts. 126

9. Motion to pay Money into Court but not brought in till three Terms after, Proceedings ſet aſide, upon Payment of Coſts by the Defendant. 139

10. Of Coſts on paying Money into Court. 182

11. The Defendant cannot have the Money back, though the Plaintiff die before the Trial. 195

12. Goods when cumbersome not to be brought into Court, but Plaintiff muſt ſhew Cauſe why he will not accept them, and Coſts. 197

### *Motion.*

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*Judgment.* 13.

*Notice.* 18, 25, 26.

*Trial.* 2, 8.

*Verdict.* 2.

### *Mutual Debts.*

1. Indorſement on the Back of the Record, that 13*l.* was due to the Plaintiff, but on balanc-

ing Accounts there was due to the Defendant 13*l.* held to be a good Verdict, and the Defendant intitled to Coſts. 97

2. Where an Executor ſues in his own Right, the Defendant cannot ſet off a Debt due from the Teſtator. *Page 228*

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1.

**I**N London and Middleſex *Ne recipiatur* may be entered after Eight o'Clock in the Evening, the Day next but one before the Day of the Sitting. 58

### *Nonprofs and Nonſuit.*

See *Irregularity.* 2.

*Judgment.* 10.

1. The Rule and *Nonprofs* for want of a Declaration ought to be in that Prothonotary's Office wherein the Plaintiff's Attorney practices. 80

2. *Non aſſumpſit* as to Part, and Iſſue on Demurrer as to other Part *Nonprofs* for want of Replication ſet aſide on Payment of Coſts, a *Reſpondeas Ouſter* being awarded on the Demurrer. 122

3. Plaintiff nonſuited at Trial dies before the Day in Bank, if Judgment be ſigned, after his Death, it is reverſible by Writ

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4. Motion by Defendant to set aside Nonsuit, for not confessing Lease, Entry and Ouster, granted. Page 166

### *Notice.*

See *Declaration*. 6, 13, 15, 16, 17, 19, 20.

*Ejectment*. 15.

*Plea*. 22.

*Process*. 7, 11.

*Replevin*. 2.

*Trial*. 1.

1. Notice to appear in the Copy of Process must not be for the Appearance Day, but the Return-Day. 138

2. Process served without Notice, Proceedings stayed. 150

3. The Notice to appear should be for the Effoin-Day, though *Sunday*. 145, 147, 149

5. Notice is to be given of executing a *Sci. fi.* Inquiry. 1

6. Notices of Trials, and Inquiries and Countermands thereof are to be in Writing. 7

7. Though interlocutory Judgment be signed above a Year since, yet only common Notice of executing a Writ of Inquiry need be given. 9

8. Where there are two Defendants, and the Plaintiff appears for them, Notice of Inquiry must be given to both. 140

9. A Writ of Inquiry, executed above a Year after the interlocutory Judgment, was

set aside, because a Term's Notice was not given. Page 146

10. A Writ of Inquiry set aside for Incertainty in the Notice. 148

11. Writs of Inquiry set aside for Incertainty in the Notice as to Time and Place. 171

12. Inquiry set aside for Incertainty in the Notice. 202

13. Notice ought to be given of executing a Writ of Inquiry of Damages in Dower. 24

14. Where the Defendant's Attorney is not known, Notice of Trial or of executing a Writ of Inquiry may be given to the Defendant. 94

15. Notice of Trial for the Assizes may be countermanded in *London*. 74

16. On an Issue of above a Year's standing a Term's Notice of Trial must be given, and be delivered before the Effoin-Day. 99

17. The Rule of fourteen Days Notice of Trial shall not be altered upon the Defendant's coming to *London* for a few Days. 107

18. Notice to put off a Trial should be made two Days before the Day of Trial. 147

19. Verdict set aside for want of fourteen Days Notice of Trial, the Defendant living in *Ireland*. 168

20. Notice of Trial must be given in Town, but Countermand may be given either in Town or Country. 181

21. Where the Plaintiff ought

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to give the Defendant fourteen Days' Notice of Trial, the Defendant ought to give the like Notice where he tries the Cause by Proviso. Page 188

22. Where Issue has been joined above a Year, Plaintiff or Defendant must give a Term's Notice of Trial. 6

23. Such Notices to be given before the Effoin-Day of the Term, but when there has been an intermediate Proceeding, as Notice of Trial or the like, then only common Notice is necessary. 6

24. Countermand of a Notice of Trial not good on a Sunday. 27

25. Notice must be given of Motion to enlarge a Rule, for shewing Cause, when the Time for shewing Cause is expired. 100

26. On the last Day of Term no Motion in Arrest of Judgment without Notice. 161

27. Notice of a Declaration bad, not saying whether in Debt or Case. 184

### *Original.*

See *Error*. 19.  
*Procests*. 1.

A Return made to a special Original after it was filed. 33

### *Outlawry.*

See *Plea*. 1, 16.

1. The Defendant has till

the *Quarto die post* to appear to the Exigent. Page 44

2. On allowing a Writ of Error to reverse an Outlawry, the Defendant must enter into a Recognizance to satisfy the Condemnation-Money. 47

3. A *Cap. utlegat.* cannot be sued out after the Death of the Defendant. 57

4. If a Person visible be outlawed in the same Country where he dwells, the Court will not oblige the Plaintiff to reverse the Outlawry; *aliter*, if in another Country. 91

5. Outlawry in a foreign County regular, if in the County where the Action arose. 115

6. What Proof of Defendant's being a visible Person necessary to set aside an Outlawry. 229

### *Oyer.*

1. The Defendant ought to have a reasonable Time to plead after Oyer given. 107

2. The Defendant ought to demand Oyer before the Rule to plead is out, and has one Day after to plead. 108

3. The Defendant shall have the same Time to plead after Oyer given, as he had when Oyer was demanded. 121

4. A Release pleaded with *Profert* in Court, and Judgment signed for not giving Oyer. 141



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5. Oyer ought to be demanded before the Rule to plead is out. *Page* 144

### *Paper-Book.*

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### *Pauper.*

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### *Peers.*

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### *Plea and Pleadings.*

See *Abatement*.

*Attorney*. 1.

*Costs*. 12.

*Dower*. 1.

*Ejectment*. 7.

*Homine replegiando*. 1.

*Judgment*. 3, 4.

*Nonpross*. 2.

*Oyer*. 1.

1. On Appearance to an *Exigi facias* the Defendant must plead *Insolvent*. 32

2. A Plea in Abatement must be delivered within four Days after Declaration delivered or left in the Office, though no Rule to plead be given. 38

3. *Nil debet* to a Bail Bond not good. 58

4. A Plea in Abatement without a Serjeant's Hand, and

without an Affidavit, is no Plea, and the Plaintiff may sign Judgment. *Page* 60

5. *Comperuit ad Diem*,  
Son Assault Demesne,  
Plene administravit,  
Riens per Discent,  
Ne unques Executor,  
Nul tiel Record,  
Per Minas,  
Per Dures,  
Infra Etatem, &  
Solvit ad Diem,

need not be signed by a Serjeant. 64

6. *Non assumpsit infra sex annos* must be signed by a Serjeant. *ibid.*

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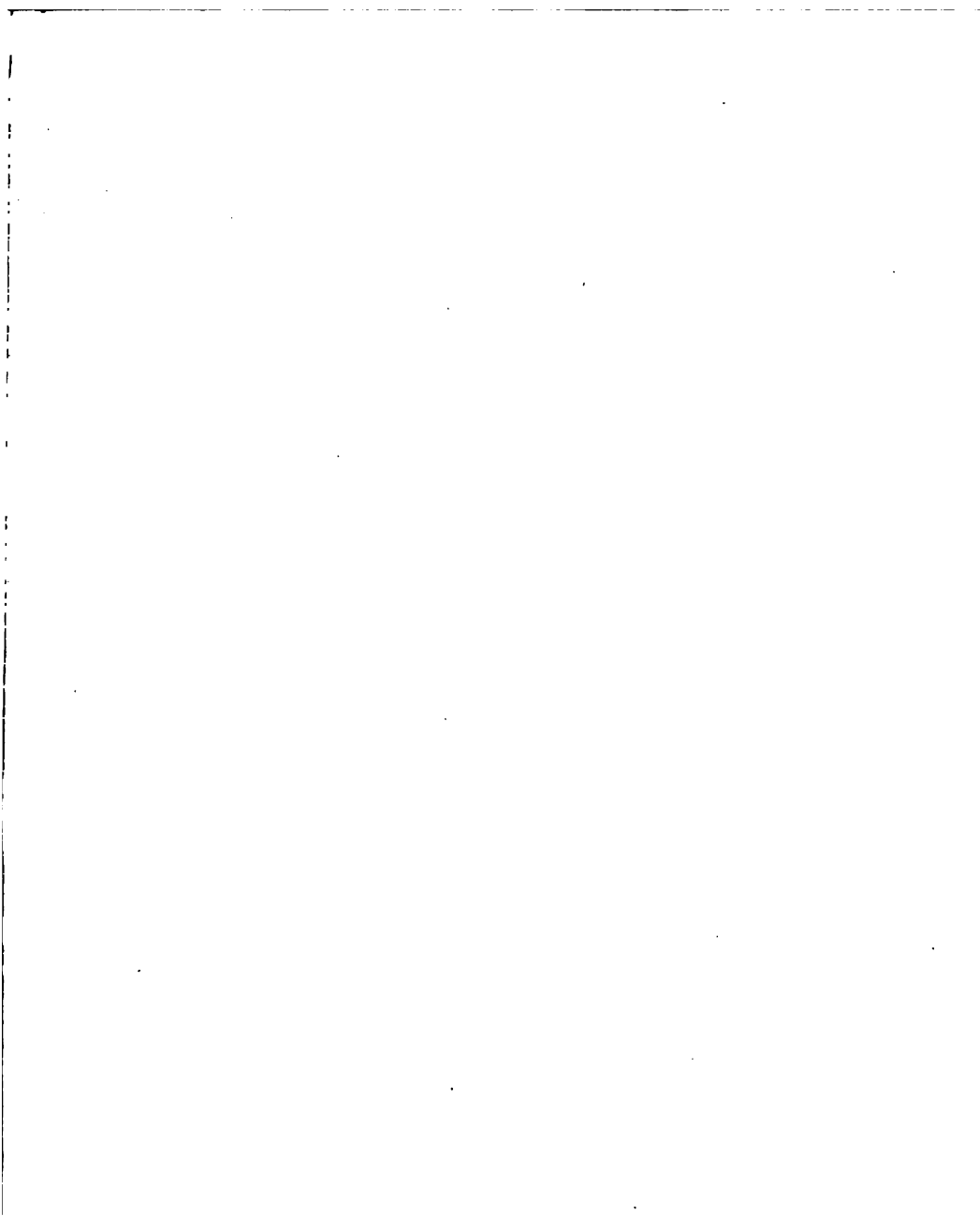
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